

THE
CASE of a RECTOR

Refusing to Preach a

Visitation Sermon

AT THE
ARCHDEACON'S Command :

AND THE
CASE
OF

OCCASIONAL DAYS and PRAYERS :

Containing,

A DEFENCE for not Solemnizing the

ACCESSION-DAY

By Reading the New Form, and for not Using
OCCASIONAL PRAYERS.

By JOHN JOHNSON, A.M.

Vicar of Cranbrook in the

Diocese of CANTERBURY,

LONDON:

Printed for R. KNAPLOCK, at the Bishop's
Head in St. Paul's Church-yard. 1721.

CASE OF A ...

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ERRATA of Consequence are thus.
to be Corrected.

Page 27, Marginal Note, Line 6. &c. read thus,
The Breach of the former in all such
as submit to the Canons is Disobedi-
ence only : The Breach of the latter
is not only Disobedience, but &c.

51, Marginal Note, Line 9, 10. read thus,
sometimes, and not very long since a
Clause hath been inserted into.

52, Line 12. Archdeacons, and Arch-
bishops.

56, Line 27, &c. read your Apparitor
shew'd me Process, and no Process ;
Process to command me to appear at
your Visitation ; no Process to com-
mand me to Preach.

64, Line 1. for designed read deigned.

79, Line 4. for subscribe read submit.

110, Whereas I here say that by the Kalen-
dar in Q. Elizabeth's Common-Prayer
Book, St. Matthias's Day was fix'd to
Febr. 25 ; I wish my own single Book
have not led me into a mistake in this
Point. I took it for granted, that all
Editions of that Book were uniformly
Printed ; but perhaps I have been too
hasty in making this Conclusion. If
it be an Error, it is a harmless one.

THE
C A S E
OF A
R E C T O R

Refusing to Preach a

Visitation Sermon

AT THE
ARCH-DEACON'S Command:
BEING

The Reverend Mr. GEORGE HUNTLEY'S
Defense of himself for his Disobedience in
this Respect to Dr. KINGSLEY, *Arch-deacon*
of *Canterbury*.

Taken from a Book Publish'd by the said Mr.
Huntley, and bearing date in the Year 1642.

®

THE
CLASS
OF
LECTOR

Relating to French

Visitation Services

AT THE

Arch-Bishop's Command

BEING

The Reverend Mr. Bishop's
Visitation of the Arch-Bishop's
the Bishop of the Arch-Bishop's
in the Arch-Bishop's
Taken from a Book published by the
Bishop, and bearing date in the Year 1740

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THE PREFACE.

W Hereas Arch-deacons claim
an Authority of appointing
any one of the Clergy to
Preach at their Visitations;
and that several Disputes have by this
means been raised; I thought it not un-
seasonable to print the Sum, and Sub-
stance of what Mr. Huntley offer'd in
defense of himself almost an Hundred
Years ago for his Non-compliance in this
respect: For there is very little to be
said on this Subject, but what the Rea-
der may find alledged by Mr. Huntley in
the following Treatise. And I have taken

The P R E F A C E.

care that none of his Arguments should be lost, or weakned, and therefore have Transcrib'd them in his own Words, tho' I have pruned away all the Digressions, and Repetitions, with which his Book abounds.

Mr. Huntley was Rector of Stourmouth near Sandwich in the Diocese of Canterbury : He appears by this Book to have been a Person of very considerable Learning, and of great Application : He was in good Measure apprised of the relative Duties between Archdeacons and Incumbents, when he first entered into this Dispute, as appears by his Letter, which he wrote in the Year 1626 to Arch-deacon Kingsley (which the Reader may see Page One Hundred and Eleven) and by drawing this Saw for sixteen Years together, one may dare say he was perfect Master of the Controversy. I can see no Grounds to suspect his good Affections either to the Church or King ; but a great deal to convince me, that he was well inclin'd to both ; tho' I have no Information of his Temper, or Character, but from his
Book

THE PREFACE.

Book only. I undertake not to justify either his Judges, or him; not his Judges for their extreme Rigor, nor him for his violent Aggravation of their Severities, and of the Guilt they contracted by this means, and for his inflexible Zeal in a Point that did so little deserve it. The greatest Blemish of his Book, is that excessive Liberty of Speech which he uses toward Persons so much superior to him; for which I have no Apology to make, but that it was the common Disease of that distracted Age, in which he wrote; one can't but pity him for suffering so sorely as he did for so small a Crime, if indeed it were any Crime at all. Yet his provoking Language will in a great measure abate the Reader's Pity. The whole Book overflows with it. I have only given here and there a Taste of it.

I thought the following Papers the more valuable, because they give us a just Account, as I am verily persuaded, of the Oath of Canonical Obedience, and of the Obligations contracted by it, concern-

A 3 *ing*

The P R E F A C E.

ing which some Men of great Name have committed dangerous Mistakes.

And farther, the Reader by observing the very severe Proceedings of the High-Commission-Court against all Clergymen that did not pay an implicit Obedience to their Superiors, may easily perceive how some Arbitrary Impositions have been brought into settled practise, tho' contrary both to Canon, and Statute.

NB. The Number of every Page of Mr. Huntley's Book is set down in the Margin of the following Abridgment: and my References are made to the Pages so number'd in the Margin, not to the Pages of this Book.



AN ARGUMENT upon a General
Demurrer joyned, and entered in an
Action of false Imprisonment in the
Kings-Bench-Court, Term. Trin. 1631.
Rot. 1483. parte Tertia, between
George Huntley, Clerk Plaintiff, and
William Kingsley Archdeacon of Can-
terbury, and others, Commissioners
Defendents, as it was prepar'd to
have been utter'd in Court by the
said G. H. but was not permitted
by the Judges of That Court (the
King's-Bench;) becaule, as they pre-
tend, the said Action was disconti-
nued, *Term. S^a Mich. 1632, &c.*

The whole Title consists of 32 Lines in Quarto.
London, Printed for George Huntley, 1642.

HE begins his Book by undertaking to Page.
prove, that there had been no Discon- 1, 2.
tinuance; or that if there had, yet
the Matter might have been rectified without
obliging him to begin de novo, according to
Stat. 27. Eliz. c. 3. This I pass over as fo-
reign to my Purpose.

Page. A True Copy of so much of the Two Parts of
 3. the High Commissioners first final Sentence, as is pleaded by the Defendants,
 Dr. Kingsley and the rest, follows:

“ **G** E O R G E, Archbishop of Canter-
 “ bury, Richard of Durham, John of
 “ Rochester, Thomas of Coventry and Lich-
 “ field, Theophilus of Landaff, Robert of
 “ Bristol, Bishops and some other of the
 “ Commissioners, found G. Huntley charg’d
 “ with two Particulars; first, for refus-
 “ ing to preach a Visitation Sermon at the
 “ Requisition and Command of the Arch-
 “ Deacon of the Diocese, Mr. Doctor
 “ Kingsley, contrary to his Canonical Obe-
 “ dience. And secondly, for setting up an
 “ Opinion, and maintaining it before the
 “ rest of the Clergy of the Diocese, That
 “ the Arch-deacon had no Power to re-
 “ quire or command him, or any other
 “ Minister to preach a Sermon at his Visi-
 “ tation; with many other abusive Behavi-
 “ ours about that Matter. It appear’d that
 “ Mr. Huntley since the 27th of March 1625,
 “ had been by the said Mr. Archdeacon di-
 “ vers times requir’d to preach a Visitation-
 “ Sermon, and had time sufficient to pro-
 “ vide himself; [but] that he, without all
 “ due Respect to Mr. Archdeacon, or the
 “ Canonical Obedience he ought unto him,
 “ with Words of Scorn and Contempt, re-
 “ fused to perform that Duty, as was prov’d
 “ out of his own Answers, both in Words
 “ and Writing: That the Archdeacon
 “ hereupon

" hereupon appeal'd to the Lord Archbis-
 " shop of *Canterbury* (who is immediate
 " Ordinary, and Metropolitan to them
 " both) that his Grace, upon Notice here-
 " of, wrote a Letter to Mr. *H* — (a true
 " Copy whereof was left with him, after
 " the Original had been shew'd him) in
 " which he advised and required him to
 " preach the Visitation-Sermon, he having
 " Time enough to prepare; which Com-
 " mandment of his Grace, Mr. *Huntley*
 " slighted, and refused to perform that
 " Duty. And after the Refusal, he came
 " uncalled, and unsent for, to Mr. Arch-
 " deacon aforesaid, then in his Visitation
 " among his Clergy, and sitting there to
 " hear Causes, and very malepertly and
 " irreverently charged the Archdeacon with
 " Falshood, and Injustice, and laid down
 " One hundred Pound in Gold on the Ta-
 " ble, and offered to lay Wagers with the
 " Archdeacon, that he had done Wrong to
 " him the said *Huntley*. For which gross
 " Abuses, and Contempts, the Court held
 " him worthy to be punished; because the
 " said Mr. *Huntley* was required to do no
 " more than what by *Law or Custom*, ac-
 " cording to his *Canonical Obedience* he was
 " tied to perform. Yet the Court at this
 " Time, reserving to themselves their fur-
 " ther Censure, only ordered the said Mr.
 " *Huntley* upon the Commandment of the
 " Archdeacon of *Canterbury*, upon compe-
 " tent Warning to be given him to preach
 " a Sermon at next Visitation holden

Page. " by the Archdeacon of *Canterbury*, and
 " afterwards before the Clergy in the said
 " Visitation to acknowledge his Fault *con-*
 " *ceptis verbis*, as shall be prescribed by
 " any three, or two of the Commissioners
 " of Court. And he is judicially admonish-
 " ed, and required to appear Personally in
 " this Place, the second Court-Day after
 " next Term, to certify his due Per-
 " formance hereof."

This Censure was passed A.D. 1626, Feb. 8.

" W H E R E U P O N, on the 19th of *April*
 " 1627, being publickly called, he appear-
 " ed Personally, and being demanded by
 " *George*, by Divine Providence, Lord
 " Archbishop of *Canterbury*," [*The Com-*
 " *missioners above-named, are here again men-*
 " *tion'd, and there are added, Dudley Diggs,*
 " *and Henry Martin, Knights, John Donne,*
 " *Walter Belcanquall, W. Kingsley, Tho-*
 " *mas Worral, Doctors in Divinity, Edmund*
 " *Pope and Hugh Barker, Doctors of Law*]
 " Whether he had perform'd the said Or-
 " ders? He acknowledg'd, that he had
 " not; and alledg'd, That Mr. Archdeacon
 " had not warn'd him by a lawful Process
 " to preach. But it appear'd, That the
 " Archdeacon had given him sufficient
 " Warning by a publick Officer, and suf-
 " ficient Time to provide himself; and he
 " being a Man sufficiently qualified by
 " Gifts of Learning for that Purpose, yet
 " contemptuously refused to perform his
 " Duty; and also that he refused to per-
 " form

"form his Submission *conceptu verbi*, as Page.
 "was injoy'd, [therefore] the said Court
 "of High-Commission *unanimi consensu*,
 "pronounced him guilty of a great Af-
 "front and Contempt, not only to the said
 "Archdeacon, and the Lord Archbishop
 "of *Canterbury*, unto whom the said *Hunt-*
 "ley is tied by Oath to perform Canonical
 "Obedience; but also against His Maje-
 "sty's Supreme Power in Causes Ecclesi-
 "astical, and to this Court, to whom the
 "same [Power] is committed. There-
 "fore the said Court first fined him in Five
 "hundred Pounds to His Majesty's Use;
 "and committed him to the New Prison,
 "there to remain till he shall give sufficient
 "Bond with Sureties, as well for the Pay-
 "ment of his Fine, as it shall be mitigated,
 "as for the Performance of his Submis-
 "sion.

Now Mr. Huntley proceeds.

THESE two Parts of the first final Sen-
 tence contain the whole original Matter,
 for which alone the High Commissioners
 did fine me 500*l.* and imprison'd me on
 the 19th of *April* 1627, and kept me in
 Prison for two whole Years, and for which
 alone on the 25th of *June* 1629, they de-
 prived, and degraded me, and thereupon
 kept me Prisoner till the 10th of *May* 1633;
 and for which alone on their last Court-
 Day in *Hilary*-Term 1630, they did ex-
 communicate me, because I would not
 deliver up my Orders *Diaconatus*. & *Pres-*
byteratus;

Page. byteratus; and for which alone my Lord

6. Chief Baron, Sir *Humphrey Davenport*, and the other Barons of *Exchequer* (refusing to grant me a *Certiorari* to the High-Commission-Court, to command them to shew the Cause, and to permit me to plead to the aforesaid Fine) did the 10th Day of *May* 1633, commit me to the *Fleet* in execution of the said Fine, and there detained me a full Year, till I, to procure my Liberty, paid the 4th Part of the said Fine, and Estreated the other three Parts to the King's Use; and for which, and also for a Petition deliver'd at the Council-Table, to crave Justice therein, I was by my most Reverend Diocesan and Provincial, the Lord Archbishop of *Canterbury*, and other Lords of His Majesty's Privy-Council, 3 *Febr.* 1636, committed to the *Fleet* by a Warrant, wherein no Cause of Commitment was express'd, and there detain'd a Prisoner till *Trinity-Term* 1639, when by *Habeas Corpus* I was brought into the *King's-Bench* Court, and the last Day of *Michaelmas-Term* 1639, deliver'd from my Imprisonment, as I had formerly been in the same Court, *Pasch. Term* 1629; and for the former original Matter only; nay, for nothing at all, in the Eye of the Law, in the Special Verdict between *Allen* and *Nash*, my Lord Chief Justice of the *King's-Bench*, Sir *John Brampton*, did, for himself and his Brethren *Trinity-Term* 1637, affirm the aforesaid Sentence of Deprivation against

against me, and deliver'd his Sentence for *Page*
the Intruder *Robert Carter*.

NB. *All that follows (containing 112 Pages
in 4^{to}. in the Print) is his Argument in
his own Defence, and which he intend-
ed to have pronounced in Court, if he
might have been permitted.*

My Honoured Lord Chief Justice, and 7.
my Honoured Judges, I humbly desire your
Lordships, and the Court to observe, That
the Defendants Charge me with some prin-
cipal, and especial Faults, others inferior,
and accessory. The principal are Two:
First, That I refused to preach a Visitation-
Sermon at the Archdeacon of *Canterbury's*
Command: And Secondly, That I raised
an Opinion amongst the Clergy, That the
Archdeacon had no Power to command
me, or any other Incumbent, to preach the
Visitation-Sermon. The inferiours or ac- 8.
cessories, are Four: First, That I came un-
call'd for to the Archdeacon, he being a-
mong the Clergy in his Visitation, and
sitting to hear Causes. Secondly, That I
malapertly charg'd the Archdeacon with
Falshood, or Injustice. Thirdly, That I
did in a very arrogant manner, lay down
100 l. in Gold on the Table, and offer
to lay Wagers with the Archdeacon, That
he had done me Wrong. Lastly, That I
refused to make my Submission, as injoyn'd
me.

Now

Page. Now, my Lord, if the Defendants fail
 9. in the two principal Points, they fail, and
 fall in all the rest: For, according to
 their Law, *Si principalis causa non sub-*
sistat, ea quæ sequuntur locum non habent.
 If they have grossly falsify'd the Law in the
 Principals, if they have call'd my Obedi-
 ence to the Word of God, to the *Articles,*
Statutes, Canons, to his Majesty's *Letters*
Patents, to the *Oath of Supremacy,* a Breach
 of Canonical Obedience, a grievous, and
 enormous Crime; what Credit is to be
 given to them in the Accessories? And
 so, my Lord, I proceed to speak first to the
 Principals.

10. Now, my Lord, these two principal,
 pretended Faults do beget two Questions;
 the one, Whether my Refusal to preach
 the Visitation-Sermon, be a Breach of Ca-
 nonical Obedience; the other, Whether
 this my Opinion, That the Archdeacon
 hath no Power to command any Incum-
 bent to preach *his* Visitation-Sermon, be
 held, and publish'd contrary to the Ca-
 nons? And these two Questions are so
 link'd together, that they do *Se invicem*
ponere, & auferre.

11. AND the first Question begets another
 Question, *viz.* Whether for the Breach of
 a Canon, or of Canonical Obedience,
 Men are by the Laws of the Land to
 be fetch'd up from the Jurisdiction of the
 Ordinary to the High-Commission-Court,
 and there to be fin'd, and imprison'd for
 it, or to be left to the Judgment of the
 Ordinary,

Ordinary, and he to proceed against them *Pages* according to the Power of the Keys?

AND tho' this be no Question, if the High-Commissioners by 1 *Eliz.* never had any Power to fine and imprison, as is declared by a *Statute* made the first Session of this Parliament: Yet, granting to the High-Commissioners a Power to fine, and imprison for Crimes within the *Statute* of 1 *Eliz.* according to the Practice before, and at the Time of my Confinement, the Words of their Commission, and the Approbation of the [Barons of] *Exchequer*, (who did imprison me for the 500 *l.* estreated by the High-Commissioners) and of this Court also (who would not upon a *Habeas Corpus* deliver me from that Imprisonment,) I only propose the former Question, Whether for Breach of a *Canon*, &c. as above.

THO' this Question be within the Compass of the *Common-Law*; and therefore ought to be spoke to by the worthy Professors of it; yet since it is in Defence of the Episcopal, ordinary Jurisdiction, which the Bishops themselves have wrong'd, and which, at this time in this my Case, *no common Lawyer will undertake to defend*, because they have Mens Persons in Admiration for Advantage Sake; and do prefer the Person of some Bishop before the Episcopal, or ordinary Jurisdiction: Therefore that all Men may know that I love and reverence it, not only better than you common Lawyers, who will not, according to your Profession, defend it; but

Page but also above, and beyond those Bishops, who contrary to their Calling, have wronged it; and that I only oppose the Presumption, and Usurpation of some Bishops, and not the Episcopal Jurisdiction; I will endeavour to shew by Seven Reasons, that the Breach of *Canons*, and of Canonical Obedience, according to the Laws, and Customs of this Land, belongs to the Jurisdiction of the Ordinary, not to the Cognizance of the High-Commission.

1. FROM the meaning of the Word *Ordinary*, as express'd by *Lindwood*, Lib. I. *De Constitut. c. exterior*, *Nota quod hæc dictio Ordinarius principaliter habet locum de Episcopo, & aliis superioribus, qui sunt Universales in suis Jurisdictionibus, & de jure Communi solus Episcopus est Ordinarius super omnes subditos suos; sed sunt sub eo alii Ordinarii, quibus competit Jurisdictio Ordinaria de jure, privilegio, vel consuetudine.* This
13. general Jurisdiction extends to all Causes Spiritual; so call'd not in respect to their own Nature, but because they are assign'd to the Spiritual Jurisdiction. And these are either Civil Ecclesiastical Causes, as Tithes, Oblations, Legacies, Pensions, or Portions: Or else Criminal Causes. Now, my Lord, with the first of these, the High-Commission hath nothing to do; no, nor hath it a general Jurisdiction in the latter. The Statute of 1 *Elix.* giveth them Power
14. only in Enormities, in horrible, heinous, and exorbitant Crimes. It hath been resolv'd in the *Exchequer*, That the High-

High-Commission cannot punish Men for *Pege* Working on Holy-Days. And in the *Common-Pleas*, Prohibition was granted for one convened in the High-Commission for giving irreverent Speeches of a Minister; for carrying Corn on Holy-Days; for not suffering the Parson, and Parishioners to go through his Yard in *Regation-Week*; and for not giving them a Repast in their Perambulation. For this ought to be before the Diocesan. But there is one Case at *Common-Law*, which I more esteem than the former; and that is this mine own Case. For the High-Commissioners did at first *Term Pasch. 1627*, commit me to Prison for Breach of Canonical Obedience: And after two Years Imprisonment, upon a *Habeas Corpus*, I was set at Liberty *Term Pasch. 1629*, because that Matter was *Coram non Judice*. Then *Term Trin. 1629*, in their second final Sentence upon the same Articles, they charge me with grievous and enormous Crimes; that so they might make the Matter *Coram Judice*; so that by *Canon* and *Common-Law*, and by the Confession of my Adversaries, the Breach of *Canons*, and Canonical Obedience, belongs to the Ordinary, and only grievous and enormous Crimes to the High-Commission-Court.

2. FROM the general, uniform Practice over all *England*, for the Church-Wardens to make their Presentments at the ordinary Jurisdiction, not at the High-Commission-Court. And this is the common

Page. mon Law of the Land, and is confirm'd by the first Article of *Magna Charta*, under the Name of *The Liberties of the Church*: For *Ecclesiastica Libertas consistit inter cetera in libero exercitio Jurisdictionis Ecclesiasticae*. Lindw. Lib. V, De Sent. Excom. C. cum Sapius. Verb. Eccl. Jurisdicit. This was clear'd by the Resolution of the Judges of *Common-Law*, as appears from his Majesty's *Proclamation*, dated at *Lyndhurst*, 18 Augusti, 13 Caroli; and is warranted by 1 Eliz. cap. 2. And both before, and since that Time, our Ordinaries did, and do exercise such a general Jurisdiction without a Commission, as appears from the Body of *Lyndwood's Provincials*, the *Legatine Constitutions of Otho*, and *Othobon*, and Ten of our last *Canons*, viz. from 109, to 119.

16. 3. FROM His Majesty's *Letters Patents*, 1. Jacobi, confirming the *Canons* of the Church when made; where the Breaches of the *Canons* are reserv'd to the Ordinary Jurisdiction, not to the Crown, or High-Commission.

17. 4. FROM his Majesty's *Commission* granted to, and pleaded by the [present] Commissioners, which gives them a Jurisdiction limited to particular Offences against certain Laws, not a general Jurisdiction in all Ecclesiastical Causes, and Offences. If they can shew any such Branch of their Commission [as extends to my Case] then it shall suffice to confute that Branch, when the Defendants produce it. The Commission

Commission, 1 *Jacobi* extends as far as *Page* the *Canons* themselves, in Cases concerning the Reformation of Ministers. But I am sure there is no such Branch in the Commission pleaded by the Defendants. And if there were any such Branch, it were void.

5. FROM the first of 1 *Eliz.* which revives 25 *Hen. VIII. cap. 19.* whatever 1 *Eliz.* doth expressly establish by reviving 25 *Hen. VIII.* it doth not by general Terms afterwards in the same *Statute* abrogate; for that would make the *Statute* like the Sentence of the High-Commissioners against me, at Variance with itself. And 25 *Hen. VIII.* doth expressly allow the Ordinary within his Diocese a general Jurisdiction in reference to the *Canons*, and *Ecclesiastical Laws*.

6. THE sixth Reason, my Lord, is taken from the Oath of *Canonical Obedience* alledg'd against me in the Defendant's Plea. *Canonical Obedience* consists in three Things, according to *Lindwood*, in *reverentia exhibenda*, in *mandato suscipiendo*, in *judicio subzundo*. As the Incumbents by taking this Oath, are bound to stand to the Ordinary's Canonical Judgments; so the Ordinary by accepting this Oath is, in Things concerning the *Canons*, to judge according to the *Canons*. 19.

7. FROM the Opinion of our late Sovereign King *James* (*ad miraculum usque acutissimus*) in the Conference at *Hampton-Court*. 20.

Page. Court, pag. 89. where he makes this Ex-ception against the High-Commissioners, that the Matters, wherein they dealt, were base and mean, and such as Ordinaries at Home in their own Jurisdictions might Censure. Whereunto Archbishop *Whitgift* answereth, *pag. 90*, That tho' the Matters be base and mean; yet in two Cases (no more) the Commissioners might interpose: 1st, when the Delinquent is so great, that the Ordinary dares not proceed against him. 2dly, Or when he is so wealthy, or so obstinate, that he will not obey the Summons, or Censure of the Ordinary; and so the Ordinary is forc'd to crave the Help of the High-Commissioners. The Defendants would make this latter my Case. For in the 14th *Article*, they say, *The Ordinary desired the Help of the High Commission against me*. But I am but a Presbyter, and of a single Benefice; *neither was I ever Contumacious*. For I was never cited to appear at the Ordinary Jurisdiction: Therefore seeing the Fault is but small, but the Breach of a Canon, or of Canonical Obedience; the Person but mean, and poor, this Matter belongs not to the Cognizance of the High-Commission, but of the Ordinary.

22.

ON the other side, If my Refusal to preach the Visitation-Sermon, be no Breach of Canonical Obedience, then it begets this Question, Whether your Lordships, the Barons of the *Exchequer*, and Lords of Council have Power to punish me for

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for what is no Breach of the Law? And ^{Page} peradventure in a desperate Case, they will not stick to maintain a desperate Opinion, That they have Power to punish me for that which is no Breach of the Law; especially seeing your Lordship hath shew'd them all the Way. For Term Trin. 1637, when you deliver'd your Opinion in the Special Verdict between *Allen* and *Nash*, your Lordship not only affirm'd the High-Commission's Sentence of Deprivation, and Degradation against me; but also maintain'd, That you were bound to affirm it, whether it were true, or false; grounded on Cause, or no Cause. All of you, in this Case, usurp a greater Power than the King. For you all punish me for that which is no Fault. No Magi-^{23,}strate hath Power to punish, except for^{25,} some Transgression of the Law. This appears from *Rom. xiii. 3.* *1 Pet. ii. 13, 14,* *Ezra vii. 29, 26,* &c. Nay, God Himself, the Supream Magistrate, will not punish any Man, except for Breach of his Laws, *Deut. xxvii. 26. xi. 26.* And how can any Deputy arrogate, or challenge any Power, or Prerogative to punish any Man for that which is no Transgression of any Law whatsoever? And now, my Lord, behold the Conformity of our Kings, and Laws to the Word of God. Our Kings challenge no more [*in the Margin, he cites King James's Declaration at Whitehall, March 21, 1609. viz. All Kings that are not Tyrants, and perjured, will be* glnd

- Page. glad to bound themselves within the Limits of their Laws. And that of King Charles 1641, pag. 20. *We are resolv'd not only to observe the Laws ourself, but to maintain them against what Opposition soever, tho with the Hazard of our Being.* Our Laws give them no more [Power]. This appears from the first of 1 Eliz. *An Act to restore to the Crown the ancient Jurisdiction over the State Ecclesiastical.* What Jurisdiction does that not restore? All such Spiritual, and Ecclesiastical Jurisdiction, as by any manner Spiritual, or Ecclesiastical Power, or Authority hath heretofore been, or lawfully may be exercised, [*they are the Words of the Act*]. And this, my Lord, doth likewise appear from the End of that ancient Jurisdiction express'd in that *Statute*, which is, That all Things may be done to the Pleasure of Almighty God, to the Increase of Virtue, and to the Maintenance of the Peace and Unity of this Realm. If any Judge imposeth the Punishment of the Law upon him that doth not violate the Direction of the Law, he incurs that foul Fault committed by the high Priest, and excepted against by St. Paul, Acts xxiii. *Thou sittest to judge me after the Law, and contrary to the Law commandest thou me to be smitten?* I will alledge but one Law of the Land more, and that is cap. xxix. of *Magna Charta*, confirm'd 30 *Caroli*, in Answer to *The Petition of Right*. "No Freeman (saith that Chapter) shall be taken
- 26.
- 27.
- or

or imprison'd, but by the lawful Judg. ment of his Peers, or by the Laws of the Land." Whosoever punisheth any free-born Subject for that which is a Breach of no Law of the Land, stands excommunicate by a double Excommunication; the one deliver'd by * *Boniface*, Archbishop, assisted by Fourteen other Bishops, in the Reign of *Henry III.* and the other utter'd by *Robert Winchelsea*, Archbishop, in 25 *Edw. I.* 28.

By this, my Lord, it appears, That the two final Sentences of the High-Commission against me, are both void. 31.

FIRST, That of Degradation, and Deprivation; because in Twelve Sheets, as it stands on Record in this Court, it mentions no one particular Fault, but only generals, namely, grievous and enormous Crimes, Excesses, and Delicts, Contumacies, Contempts, and Incurabilities. Therefore, my honour'd Lord Chief Justice, under favour, your Lordship was mistaken, when in the Special Verdict between *Allen* and *Nash*, you did parallel my Case and *Candrey's*, in the present Point.

The

* *Magna Charta* was twice confirm'd by Excommunications solemnly pronounc'd by Archbishops and Bishops, in the Reign of *Henry III.* First, *A. D.* 1224. when *Langton* was Archbishop of *Canterbury*: Again, when *Boniface* was Archbishop of *Canterbury*, *A. D.* 1253, Archbishop *Winchelsea* in the Reign of *Edw. I.* order'd it to be fix'd to the Door of every Cathedral Church, and solemnly publish'd Excommunications against the Infringers of it, as did several of his Successors.

Page. The principal Point in † *Caudrey's Case*, was not, Whether the Sentence found against him, did charge him with any particular Crime? (for that was evident, and granted on both Sides in *Caudrey's Case*); and the Negative is as evident in my Case, as the Affirmative was in *Caudrey's*. The principal Point in *Caudrey's Case*, was, Whether the Commissioners had pursu'd the Form of their Commission in depriving him upon his first Conviction, who by the Statute of 1 *Eliz.* should not have been depriv'd till his second Conviction.

32. THEREFORE this Sentence [against me] containing only Generals, shall stand branded with Injustice, not as a Sentence according to Law, but a foul Sin against the Law; and (to use the Words of that Sentence) a grievous, enormous Crime. And both the High Commissioners in giving it, and your Lordship, and this Court in receiving it, have shew'd yourselves not Judges according to Law, but Sinners against the Law. And I out of Love to your Persons, and Duty to God, am bound to tell you so much. (*He cites Levit. xix. 13.*)

AND, Secondly, my Lord, the High-Commissioners first final Sentence of the

† *Caudrey* was depriv'd by the High-Commission for Preaching against the Book of Common-Prayer, and refusing to celebrate Divine-Service according to that Book.

500 l. Fine, and Imprisonment, is like Page
 wise void; because, tho' it mention a par-
 ticular Crime; yet that Particular, that
 Refusal to preach that Visitation-Sermon,
 is no Fault, no Transgression of any Law
 whatsoever; but a Virtue, and an emi-
 nent Virtue, even the Virtue of Canonical
 Obedience. I will not require an Ecclesi-
 astical Law, let them produce any Law, Civil
 or Divine. Nay, my Lord, let those Augu-
 stine's, Hierom's, Ambrose's, Nazianzen's, Chry-
 sostom's, Origen's, Basil's, with those Reverend,
 Right Reverend, Most Reverend Prelates,
 and Patriarchs of our Church produce some
 Colon, some Comma, of a Law: Nay, my
 Lord, I will once more deal more gene-
 rously, and munificently, more heroical-
 ly with that Honourable Court, let them
 only produce *σείλημα τι κειράσμα τι*
 some Shaving, Scraping, Paring, Shred,
 Piece, Particle, or Fragment of a Law,
 one *ῥῶτα*, one Apex, one Tittle, or Point
 of a Law, and I do most willingly and
 cheerfully submit. And now, my Lord,
 we are come to the *τὸ κειράσμα*, the ca-
 put Controversia. And it cannot be known,
 whether my Refusal to preach the Visita-
 tion-Sermon, be a Breach of Canonical
 Obedience, till it be understood what this
 Canonical Obedience is.

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THE High Commissioners in the first
 Part of their final Sentence, as it was
 given in their own Court, say, That the
 Archdeacon commanding Huntley to preach
 his Visitation-Sermon, hath injoyn'd him to

B

more

Page. more than the said Huntley was bound to do by Law, Custom, and by his Canonical Obedience. And herein by making Canonical Obedience, a distinct Thing from Law, and Custom, they shew they only use the Name of Canonical Obedience, but mean blind, universal Obedience, tho' swerving from Law and Custom. Your Lordship steps a Degree farther, and makes it not only distinct from, but opposite to Law and Custom. For in the Special Verdict between *Allen* and *Nash*, your Lordship said, That if Mr. Archdeacon owed me a Hundred Pound on Bond, he might by Canonical Obedience command me to deliver up that Bond, the Money not being paid: Or, he might command me to send him a Yoke of Oxen, a Score of fat Weathers, which is not only beyond but contrary to Law, and Custom, or more than his Majesty, or any of his Royal Predecessors challeng'd by Virtue of the Oath of Allegiance. Whether your Lordships have alter'd this your Opinion, I know not, the Hig'h-Commissioners, I suppose, have alter'd theirs. And this Alteration, as I suppose, proceeded from you, Mr. Justice *Heath*, who prettily and wittily did contrive this Alteration, by changing these former Words, *Law, Custom, and his Canonical Obedience*, into these, *Law and Custom, according to his Canonical Obedience.* See *pag. 4.*

BUT, my Lord, Mr. Justice *Heath* hath not rightly discover'd the Nature of Canonical

nical Obedience. * For Canonical Obedi-
 ence hath no Reference to Custom, nor to
 Law in general; but only to that Part of
 Law, which is call'd the *Canon-Law*; Cano-
 nical Obedience, is such Obedience as the
Canon requires. Whatsoever is within the
 compass of Canonical Obedience, is within
 the compass of the *Canons*; and whatever is
 without the compass of the *Canons*, is with-
 out the compass of Canonical Obedience.
 And if I am not by some *Canon* bound to
 preach the Archdeacon's Visitation-Sermon,
 then I am not bound by Canonical Obedi-
 ence. And that this is so, I will now en-
 deavour to prove by Four Reasons.

1. FROM the Sense, and Meaning of
 the Word *Canonical*. As Legal, Evange-
 lical, Customary Obedience, is such Obe-
 dience as the Law, the Gospel, or Custom
 requires; so Canonical Obedience, is such
 as the *Canon* requires. A *Conjugatio*, or
Denominatio, is a Topick deliver'd by
Aristotle, *Quintilian*, &c. He produces their
Original Words in the Margin. *Lyndwood*,
 (Lib. V. Tit. De Heret. c. Reverendiss.) doth

B 2

thus

* There is a Paragraph in the 100th Page of Mr.
Huntley's Book, which tho' omitted there, may very
 pertinently be inserted here, viz. There is a two-fold
 Canonical Obedience; the one due to the *Canons* only, and
 the other to the Prelate's *Mandate*, according to *Ca-*
non. The Breach of the former, in all such as submit
 unto the *Canons*, is not only Disobedience, but also
 Contumacy, yea, and Perjury too in all them that have
 taken the Oath of Canonical Obedience.

Page. thus expound the Word *Canonice*, *id est*,
Secundum Exigentiam Canonum.

39. 2. FROM the general Consent of Learned Men. *Bellarmino*, (whom he cites with great Parade) *De bonis operibus*, cap. x. saith, Canonical Hours, are call'd Canonical, because they are assign'd, deputed, and appointed by the Canons: And *Petro Soave Polano*, in the 6th Book of the History of the Council of Trent, doth give the same Reason of the same Name. So doth

40. *Brentius*, a Learned Man of our own Religion, *De Confess. Wittenberg.* cap. xx. *Gregory the Great* speaks of *Distinctio Canonica* in *Lib. Epist. XI. Epist. LI.* [our Bishop *Bilson* in his excellent Treatise, *De Perpet. Eccl. Christi Gub.* doth interpret these Words of *Gregory* by *Pœna Canonica*, *id est Canonibus congruens*: So doth *Lyndwood*, *Lib. V. De Pœnis. c. evenit. v. Canoniceas*: So doth *Vanquall*, *Molanus*, & *Archidiaconus*. (He produces their Words.)

41. 3. MY third Reason strikes the Nail home. It is the very Definition of Canonical Obedience deliver'd by *Lyndwood Terminis terminantibus*. "Canonical Obedience, is such Obedience as the Canons, and Constitutions rightly made, and publish'd, do require." *L. I. Tit. de Major. & Obed. c. Presbyteri. v. in virtute Obedientie.* (He greatly and justly magnifies *Lyndwood's* Authority, and reckons him a more proper Evidence, because he lived 200 Years since, and was dead before this Controversy began, tho' this had been on Foot full

fall 16 Years, and adds in the Margin: It Page
 began at the Archdeacon's Visitation, *Octo-*
ber 1624, continu'd at his Visitation 1625,
 and 26. The last Day of *April 1626* Ar-
 ticles were exhibited against me. *April 19,*
 1627. I was by the Commissioners com-
 mitted to Prison. *April 29, 1629;* I did
 that Term begin an Action in the *King's-*
Bench-Court against the Commissioners,
 which this 24th Day of *March 1641,* hath
 depended 12 Years, 3 Quarters).

THAT Canonical Obedience, is such 42
 Obedience as the Canon requires, appears
 (and indeed much more clearly) from the
 opposite Member of the Division. In the
 Church of *Rome,* Obedience is either Ca-
 nonical, such as Prelates, by Virtue of
 the *Canons* may require, or else Arbitrary,
 or Religious Obedience, as the *Papists* call
 it, such as the Superior [of any Reilgi-
 ous Order] shall require by his Dictates,
 whatsoever they be. We rightly call it
 blind Obedience. [For this, he cites Cha-
 mier, and in him Theodoret and Chryso-
 stom, and proceeds in declaiming against
 this Arbitrary Obedience, and shews much
 Reading upon it: Proves it to be the Do-
 ctrine of the Jesuits, from the Constitutions
 of that Society. This fills 6 Pages.

BISHOP Bilson, in his foresaid Trea- 48
 tise, saith, " In our Church Metropoli-
 " tans, and Diocesans are in every Point
 " directed by written Laws." And again,
 " In our Church, Diocesans assume not
 " to themselves the making of Laws for
 B 3 " their

Page “ their Dioceses, as your Presbyters do
 “ in every Parish,” [*He speaks against the*
Presbyterians] “ but cause such Com-
 “ mands to be executed as Pious Princes,
 “ and Councils duly celebrated have de-
 “ creed.” And so, my Lord, by the De-
 finition of Canonical, and Arbitrary Obe-
 dience, it appears that Canonical Obe-
 dience, is such as the Canon requires.

49. 4. My fourth Reason, is in my Ap-
 prehension, of more Strength and Force
 than the three former, and it is taken
 from the 19 and 21 Chapters of 25 *Hen.* 8.
 and the first of 1 *Eliz.* which *Acts* do
 limit and confine the Clergy of this Land
 unto the *Canons*, either made by a Provin-
 cial Synod, and confirm'd by his Maje-
 sty's *Letters Patents*; or else [*to Canons*]
 made beyond-Sea, and receiv'd here by
 the King's Sufferance, and the Subjects
 free Consent, and Usage, that none of the
 Clergy in their several Jurisdictions can go
 beyond these *Canons*. Therefore Canon-
 ical Obedience requir'd in our Church,
 must of Necessity be such Obedience as
 those *Canons* require; because the supe-
 rior Clergy cannot out of Command re-
 quire more; nor the inferior Clergy out
 of Obedience yield more: So that if any
 50, [of the Clergy] shall extend Canonical
 51. Obedience, or the Archidiaconal, Episco-
 pal, or Archiepiscopal Jurisdiction beyond
 those *Canons*, he doth presume to make
Canons within his own Jurisdiction, and
 so doth transgress 1 *Eliz.* and 19, 25 of
Hen.

Hon. VIII. and is therefore liable to be *Page*
fin'd, and imprison'd at the King's Plea-
sure.

AND now, my Lord, by one Syllo-
gism grounded upon this Canonical Obe-
dience, I will acquit myself, and all other
Incumbents from Preaching the Visitation-
Sermon. Canonical Obedience, is such
Obedience as the *Canon* requires.

BUT the *Canons* bind every Visitor to
preach his own Visitation-Sermon,
Licensed Preachers to preach at their
own Cures only; and forbid me, and
such as I am, that are not Licensed
Preachers, to expound any Scripture,
or to preach in our own Cures, or
elsewhere.

Ergo, By Canonical Obedience
every Visitor [is bound to preach his
Visitation-Sermon, every Licensed
Preacher to preach in his own Cure
only; and every Incumbent that is
not a Licensed Preacher, is bound to
preach no where at all].

THE *Major* hath formerly been prov'd: 52.
All the Question is concerning the *Minor*.
This hath three Parts.

1. THE first is, The *Canons* bind every
Visitor to preach his own Visitation-Ser-
mon.

2. THE *Canons* bind Licensed Preach-
ers to preach in their own Cures only.

B 4

3. THE

Page 3. THE third is, The *Canons* forbid me, and such as I am, that are not Licensed Preachers, to preach, or expound Scripture in our own Cures, or elsewhere.

1. THE *Canons* bind every Visitor to preach his own Visitation-Sermon. Amongst the *Canons*, the Word of GOD hath the first Place. St. Peter commands his Com-Presbyters, *Feed the Flock of GOD, which is among you, τὸ ἐν ὑμῖν*, which is committed to you, or which dependeth on you, 1 Pet. v. 2. The Visited, are the Flock of the Visitor, and *ex officio, ex debito*, to be fed by him. The Visitor, if a Bishop, is Rector of the whole Diocese. Lyndw. Lib. IV. 33. Tit. De Cland. Despon. c. Humana v. Diace-sanorum, and hath Cure of Souls over the Visited. And if he be an Archdeacon, he is *oculus Episcopi, manus Episcopi*. The Archdeacon is in all Respects the Vicar of the Bishop, and hath the Cure of the City Clergy, as well as of those that belong to the other Parishes. Decret. Lib. I. Tit. De Offic. Archidiacon. cap. i.

LUKE x. 7. The Labourer is worthy of his Hire. This is true *et converso*, he that hath the Hire, is bound to perform the Labour. The 55th Rule, or Maxim of the Canon-Law, is, *He that feels the Burden, ought to feel the Profit, and he that feels the Profit, ought to feel the Burden*. The Labour of the Visitation is to correct and preach: The Hire is the Procurations. 34. Procurations are the Payment of such necessary Charges as are due to Prelates when they

they Visit their Dioceses, or Subjects. De- Page
cret. Lib. I. Tit. 23. c. x. We are always
summon'd to appear at their Visitations,
and there to pay to them Procurations, due
for Visiting; that is, for Preaching and
Correcting, saith the Canon-Law.

MY last Argument out of the Word of
GOD is taken out of 1 Tim. iii. 1. *If any* 55:
Man desire the Office of a Bishop, he desi-
reth a worthy Work. Every Archdeacon,
Bishop, and Archbishop hath desir'd, hath
obtain'd the Office of a Visitor, Ergo, he
is bound to desire, he is bound to per-
form the worthy Work belonging to that
Office, that is, to preach and punish.

THE only Thing questionable, is,
Whether to teach and preach, be the Vi-
sitor's Work at the Visitation? And I will
now prove that evidently out of the Canon-
Law. Lyndw. (Lib. I. Tit. *De Offic. Archid.*
c. i.) sets down this Canon made by Steven
Langton, Archbishop of Canterbury about
400 Years since, *That Archdeacon's in their*
Visitations take Care that the Canon of the
Mass be correct, and that the Priest can
rightly pronounce the Words of the Canon,
at least, and that he knows the true Mean-
ing of them; and let them teach Laymen
in what Form they ought to baptize, &c. By 56:
this Canon the Archdeacon is bound to
teach the Clergy and Laity at the Visitation
how to do their own Duties at Home in
their own Parishes, not how to do his Du-
ty at the Visitation. The Legatin Consti-
tution of Otho. (*Statuimus*) binds the Arch-
deacons

Page deacons at their *Visitations* to teach the Incumbents how to carry themselves in *Administering the Sacraments*, and they are to do this at every Meeting of their *Deanries*. Again, among other *Constitutions*, I find this (*Sint Soliciti*) which binds the Archdeacons to be frequently in their *Chapters* in every *Deanry*, and diligently to instruct their *Priests* to live well, &c. *Athone* in his *Gloss* shews how the Archdeacons did neglect this Duty, because it brought no Profit with it. But if either Profit, or Ease, my Lord, would have prevail'd with the Archdeacon, this Controversy would never have been between him, and me. In his Plea he confesseth, that I offer'd him two or three Pieces, that is, by his own Interpretation, two or three Pounds; that if he would preach that Sermon himself, he might have a rich Reward for doing his own Work, or with Part of the Reward to have procur'd another to preach it, and might have had both Profit and Ease. But his Spleen against me was so great, that he preferr'd a most unjust War, before a most just Peace.

FROM the *Provincial* and *Legatine Constitutions*, I pass to the Body of the *Canon-Law*; and there I find this *Constitution*, *Decretal*, L. III. Tit. xxxix. *De Censib.* cap. xxiii. Parag. porro, That they who exercise the Office of *Visitation*, should spend their Time in Preaching, Exhorting, Correcting, and reforming. Therefore, my Lord, since it is the *Visitor's Duty* to visit; and to vi-
sit,

fit, is to preach and correct ; therefore it is his Duty to preach and correct. And thus much shall appear out of my next Canon, which is taken from *Sext. Decretal.* Lib. III. Tit. 20. *De Cens. exact. & procur.* cap. i. parag. *Sane, Let the Archbishop, when he is to visit, having first proposed the Word of God, make Inquiry, &c.* When this Text was alledg'd in my Behalf, Dr. *Rives*, the King's Advocate, made this Exception against it, That *proponere Verbum Dei*, did not bind the Archbishop to preach, but only to lay the Word of God before him. As I then intreated Dr. *Rives*, so I [now] desire your Lordships to observe the Difference between *Rives's* Gloss, and the ordinary Gloss: The ordinary Gloss [says] *What should the Archbishop do first in Visiting?* The Answer is, *He ought first to preach the Word of God.* The last Paragraph of this Chapter requires as much of every Bishop and Archdeacon in their Visitation, as the former doth of the Archbishop; [for thus it speaks] *We command, that this Form of Visiting be fully observ'd by all Bishops, and other Prelates in Visiting such as are subject to them by Ordinary Right.* *Joannes Andreas, Helias Regnier, and Anonymus*, the Title of whose Work is, *Casus longi super Sext. Decretal.* agree with the ordinary Gloss [above cited] *Joannes Vanquai* says, *The Visitor must first make Inquiry, &c. and the next Day preach the Word of God.* In his *Breviary on Sext. Dec.* on the Text last cited,

Page
 58.

59.

60.

61.

62.

Page cited, Cardinal Hostiensis, in the third Book of his *Summe*, Tit. *De Censib.* exact.

63. *Et procur.* saith, It is expressly set down in the very Text of the Canon-Law, in the Pope's Authentic Epistle, That every Prelate must preach his own Visitation Sermon.

64. AND if any Bishop, thro' Business, Sicknes, or want of Knowledge, cannot in his own Person preach the Word of GOD, then the 10th Canon of the second Lateran Council, bids him, Take to himself able Men, powerful in Deed and Word, who may in his Stead edify them by Word and Example, and give them competent Allowance for it. And if any does it not, he is severely to be punished.

65. 2. THE Canons bind Licensed Preachers to preach at their own Cures only. The Words of the 45th Canon are, " Every Benefic'd Man allow'd to be a Preacher, and residing on his Benefice, having no lawful Impediment, shall in his own Cure, or in some other Church or Chapel, where he may conveniently, near adjoining (where no Preacher is) preach one Sermon every Sunday of the Year." Therefore Mr. Huntley's Meaning must be, That Licensed Preachers are bound in general to preach every Sunday, but they are bound to preach in their own Church only; They are permitted, not obliged to preach in any other neighbouring Church.

No w

Now, my Lord, can the Archdeacon, *Page*
 or any other Prelate, by Canonical Obe- 66.
 dience command a Licensed Preacher to *Line*
 preach twice a *Sunday* in his own Cure; 28.
 or once on the Week-Days, either in his
 own Cure, or at the Visitation, or else-
 where? He cannot by Canonical Obedi-
 ence, which is such Obedience as the *Ca-*
nons require, command him beyond the
Canons? If he does, he brings in Uncano-
 nical, Prerercanonical, Anticanonical Obe-
 dience, the first kind of Arbitrary, or
 Blind Obedience; he goes contrary to the
 19th of 25 *Hen. VIII.* he presumes to make 67.
Canons within his own Jurisdiction, &c.
See pag. 49. And besides, both he, and
 they that obey him, assist him, plead and
 argue for him, or give Sentence with
 him, do all violate the *Oath of Supremacy*;
 for by that Oath they were bound to de-
 fend all Jurisdictions of the Crown.

BUT this is not my Case, my Lord,
 for I am not a Licensed Preacher, nor was
 when this Controversy first began. The
 Defendants confess so much in their Plea:
 Neither could I since procure a Licence of
 them, tho' I sued unto them for it; and
 they both in their Sentence, and Articles
 confess me to be sufficiently qualify'd for
 a Licensed Preacher. And, —

3. THE *Canons* forbid me, and such as
 I am, that are not Licensed Preachers, to
 preach, or expound any Scripture in our
 own Cures, or elsewhere. [The Words of
 the 49th *Canon* are] “ No Person what-
 “ soever,

Page “ soever, not Licensed for a sufficient or
 “ convenient Preacher, shall take up-
 “ on him to expound in his own Cure,
 “ or elsewhere any Scripture, or Matter of
 “ Doctrine; but shall only study to read
 “ plainly, and aptly, without glossing or
 “ adding, the *Homilies* already set forth,
 “ &c. ”

65. THE ancient *Canons* gave Power to e-
 Line very Presbyter that had Cure of Souls, to
 21. preach the Word in his own Cure. *Thom.*
Arundell, Archbishop of *Canterbury*, speaks
 thus; *A perpetual Curate is sent by the Law*
to the Place, and People of his own Charge.
 [He means, sent to preach; for it was of
 this Ordinance he was speaking.] *Lyndw.*
 in his Gloss, shews who is a perpetual Cu-
 rate, namely, a Bishop in his Diocese, a
 Rector or Vicar in his Parish, or any one
 perpetually entitled to a Benefice, which
 hath Cure of Souls belonging to it. [He
 66. cites also *Peckham's Constitutions*, beginning
Ignorantia; but this only obliges the Priest
 to read a *Homily*.] But our *Canons*, made
 57. in King *James's* Reign, have alter'd this
 Point, and permit not any to preach, no
 not in his own Cure, till he be a Licensed
 Preacher. And I therefore then was, and
 now am forbidden to preach, or expound
 any Scripture in mine own Cure, or else-
 where.

Now, these *Canons*, my Lord, were
 made in a Provincial Synod, call'd by the
 King's *Writ*, they were confirm'd by his
 Majesty's *Letters Patents*. His Majesty
 therein

therein commands all his loving Subjects *Page*
 to keep all these *Canons*: And he chargeth
 all that exercise any Ecclesiastical Juris-
 diction, to see, and procure, that all do
 observe, and keep them: So that his Ma-
 jesty doth charge me; being no Licensed 68.
 Preacher, to observe the *Canons*, which
 forbid me to preach. Can the Archdeacon
 on any other Prelate by Canonical Obe-
 dience command me to preach contrary to
 these *Canons*? What then am I to do? Am
 I to obey his Majesty's *Letters Patents*, or
 am I to obey the Archdeacon's Apocry-
 phal, Uncanonical, Anticanonical, Anti-
 diplomatical Postscript, private Letter, or
 Message?

FELINUS *de Rescriptis (cap. si quando)*
 gives this Rule: "Subjects ought to re- 69.
 sist a Prelate that is ignorant of the Law,
 " by teaching him better; much more if
 " he violate the Law; but especially if
 " he trample upon it." And if this be
 a good Rule, then *Canons* made by a Pro-
 vincial Synod for the lawful Authority of
 a Bishop over a Presbyter, according to
 GOD's Word, and the uniform Practice
 of the Church for 1500 Years after Christ,
 and confirm'd by his Majesty's *Letters Pa-*
tents, are to be preferr'd before the Arch-
 deacon's Antiprерogative, Antisupremati-
 cal Postscript. *Hostiensis* says, We must
 not submit to, but resist an Error that is
 contrary to the *Canons*: And when two
 Lords command Contraries, we must o-
 bey the greater, resist the less. *Lyndwood*
 says,

Page says, A Bishop can determine nothing against *Canon*; nor can an Inferior null the Law, of the Superior. The Body of the *Canon-Law* gives this Rule, " Let no Man in Ecclesiastical Actions, and Judicatures, be led by his own Opinion, but by the *Canons*." *Bellarmino* gives this Rule, as it is well express'd by my Lord's Grace of *Canterbury* in his *Conference with Mr. Fisher the Jesuit*. *Inferiors may not judge whether their Superiors proceed lawfully or not, unless it manifestly appears that an intolerable Error is committed.*

71. BUT if there were no other Rule but that which my Adversaries have thrust into my Hands, that is, Canonical Obedience, that was enough to decide the Question. For Canonical Obedience, is such Obedience as the *Canons* require: The *Canons* are to be preferr'd before the Archdeacon's private Message. And then I have done well; and the Archdeacon and the Defendants, and the Honourable Court of High-Commission, your Lordship, this Court, the Barons of *Exchequer*, and the Lords of the Council, have done ill. My Son, forsake not the *Instructions of thy Mother*, the Church. Which best deserves the Name of Church, and of Spiritual Mother, a Provincial Synod, or an Handful of Men in the High-Commission-Court, sitting Judges in their own Cause, wherein they are all Parties? Surely, a Provincial Synod. So that now Canonical Obedience is that very same
Net

Net which they had laid for me, and in *Page*
 which their own Foot is taken, and I am
 deliver'd. *Hic est digitus Dei.*

AND being acquitted in the first Par- *72.*
 ticular, which by the Testimony of mine
 Adversaries, is my principal Fault; what-
 soever else they charge me with must
 needs be inferior, and accessory; and
 since the Principal proves a Virtue: all the
 other lesser than that must needs be Vir-
 tues, no Faults or Vices. Yet once again,
 my Lord, not only I am acquitted, but
 the Defendants themselves convicted, and
 found guilty of a double Crime. First,
 They bring into this *Orthodox* Church ar-
 bitrary, blind, contracanonical Obedience.
 Secondly, In calling my Obedience to the
Canons, to his Majesty's *Letters Patents*, *73.*
 to *Statutes* of 1 *Eliz.* and 25 *H. VIII.* the
 37th *Article* of the Church, and the Word
 of GOD, Breaches of Canonical Obedi-
 ence, grievous and enormous Crimes. In
 Fining, Imprisoning, Depriving, Degrad-
 ing, Excommunicating me for my Obedi-
 ence, they have Fin'd, Imprison'd, Depriv-
 ed, Degraded, and Excommunicated a
 Provincial Synod, the High Court of Par-
 liament, this *Orthodox* Church of *England*,
 and his Majesty. *Turpissimum est, ut inde* *74.*
nascerentur injuriæ, ubi jura nascuntur; It
 is a most shameful Thing that Courts of
 Justice should be Courts of Injustice: And
 then, by the Confession of my Lord's
 Grace of *Canterbury* in his Speech in the
Star-Chamber, *Term. Pasch. 1637*, there's
 all

Page all the Reason in the World, that his Grace, the High-Commissioners, and the Defendants, should all be severely punish'd.

SHOULD be? nay, my Lord, they are, they are all excommunicated by a double Excommunication *ipso facto*. "To be excommunicated *ipso facto*, is to be excommunicated by a Law made, or a Sentence passed before-hand, without the Ministry of Man intervening after the criminal Fact;" as *Lyndwood* saith, Lib. I. *De Offic. Archid. c. eisdem. v. ipso facto*. They have all drawn upon themselves those two dreadful Sentences denounc'd against the Violators of *Magna Charta*, by Archbishop *Boniface* and Archbishop *Winchelsea*. (See pag. 27. and the 75. Notes there.) And, my Lord, *pares in culpa, pares in pena*. Your Lordships, this Court, the Barons of the *Exchequer*, and the Lords of the Council, have all likewise *ipso facto* drawn upon themselves that double Excommunication. Your Lordships, and this Court, by affirming the Commissioners second final Sentence; the Barons of the *Exchequer* by imprisoning me; the Lords of the Council by imprisoning me for a Petition against the High-Commissioners for their Exorbitances; and also against your Lordships, and this Court, because you would not do me Justice, according to his Majesty's most just *Mandate*: But the High-Commissioners have punish'd me six times contrary to the xxixth Chapter of *Magna Charta*, they

they have twice imprison'd, and once *Page* fin'd, depriv'd, degraded, and excommunicated me; and for every time they are twice *ipso facto* excommunicated, in all twelve times. Your Lordships, this Court, the Barons of *Exchequer*, and the Lords of Council have only once apiece punish'd me contrary to *Magna Charta*, and so are only twice apiece excommunicated.

THUS much, my Lord, concerning the Principals: I should now proceed to the Accessories; but there are three Arguments first to be answer'd. 77

1. I will begin with the Argument taken from Law, that is, from the fifth Commandment; You Sir (saith Sir Henry Martin to me) will do nothing but what you are bound to do by Law, doth not the fifth Commandment bind you to honour your Father? And is not the Archdeacon your Spiritual Father? And hath he not therefore Power to command you, his Spiritual Son to do any Spiritual Work? And is not the Spiritual Son bound to do the Spiritual Work?

[He gives Sir H—— many sneering Complements, and proceeds sometimes in a comical, sometimes in a serious, argumentative Manner against this Knight Ecclesiastical, to pag. 89. there he says, what is sufficient for the Confutation of Sir H——'s Banter, and then gives him a parting Sarcastm.

MY Lord, Sir H. M. by his Chymical 89.
Inter-

Page Interpretation, will make it every Spiritual Son's Duty to teach his Father, the Parishoner's Duty to teach the Incumbent, the Incumbent's Duty to teach the Archdeacon, the Archdeacon the Bishop, the Bishop the Archbishop, the Archbishop the Patriarch. I think I may truly say, Sir H. M. hath found that in the fifth Commandment, which God never put into it: Just as *Anah* found Mules in the Wilderness, as he kept his Father's Asses. *Gen. xxxvi.* the one found out a Creature which God never had made, the other a Sense which God never intended. Therefore seeing so eminent a Man, who was *Vox Legi, Lex Legi, Rex Legi*, who could create *Legem de non Lege*, & *annihilare Legem in non Legem*, could not find out any one Argument either in the *Civil* or *Canon-Law*, nor in the Word of God; I think it more than probable that neither the *Canon*, *Civil*, nor *Divine Law* will afford my Adversaries one Argument against me.

90. 2. THE Defendants second Argument, is taken from Custom. In Speeding the Commission at *Canterbury*, they brought up Ten or Twelve Processes to prove this Custom; but after they had brought them, they durst not so much as shew them. But let it be Custom; then it is a Civil Ecclesiastical, not a criminal Cause, and so is all this Time *coram non judice*, and so the whole Proceedings, and Sentence are utterly void.

LE

If it be Custom, it is a Custom contrary to the 36, 49, and 52 Canon made 1 Jacobi, that is about 39 Years since. If it were a Custom before those Canons were made, then it was before that time tried and obtain'd in some contradictory Judgment. For *consuetudo non valet, nisi sit obrenta in contradictorio Iudicio*. Let them shew this, and I submit. If it were not Custom before those Canons were made, it cannot have grown to be a Custom since; for 39 Years Prescription, is not sufficient to make a Custom: Nay, my Lord. 91. seeing a Custom cannot grow in Time of Opposition, we must from the former 39 Years, defalk 16, because so long this Custom hath been opposed [by me.]

LET it be Custom before the Canons were made; yet the Archdeacons, Bishops, and Archbishops Personally present in the Provincial Synod by making the [36, 49, and 52,] Canons, gave up their Right to the former Custom. [For those Canons are inconsistent with such a Right.] But it cannot be a good Custom, because it is contrary to the Word of GOD, contrary to the whole Course and Tenor of the Canon-Law; all which I have formerly shew'd: And it is contrary to natural Equity; and *contra naturalem equitatem nulla valet consuetudo, etiamsi omnes homines de mundo aliter facerent*. It is contrary to natural Equity for us to detain Procurations from the Visitor, when he visits, that is, corrects and preaches; and it is contrary to 92.

Page to natural Enquiry for the Visitor to require Procurations of us for Visiting, when he doth not visit, that is, preach, and correct.

3. THERE is one weak Argument yet remaining, That the Archdeacon is *tanquam Oculus Episcopi*, and therefore may injoyne the Ministers within his Jurisdiction to preach his Sermon, that he may see their Sufficiency.

I CONFESS, the Canon-Law styles the Archdeacon *oculus Episcopi*, and it styles him also *Vicarius Episcopi*. Now the Bishop's Duty is to visit his Diocese, that is, to preach to, and reform all there. *Et Vicarius tenetur vices implere ejus cujus est Vicarius*. This doth oblige him to preach, and correct, as well as to hold a Visitation under the Bishop.

93. THE Deacons have this Title in the Canon-Law. *Distinet. 93. cap. vi.* Could the Deacons as *oculi Episcopi* injoyne the Presbyters to preach? The Archdeacon is call'd *Oculus Episcopi*, in three Respects.
94. *Decretal. Lib. I. Tit. 23. cap. vii.* First, because he is to overlook the whole Diocese in the Bishop's Stead, and to correct what is out of order, or to inform the Bishop of it. Secondly, He is to examine the Clergy at their Ordination. Thirdly, Because he is to do the like at the Collation of Benefices, and then to Induct those whom the Bishop institutes; to examine the Clergy is the utmost he can challenge
95. as *Oculus Episcopi*. I can never think that

that Eye fit to be *Oculus Episcopi*, which Page cannot discern Examination from Preaching; Ordination and Institution from Visitation.

HOWEVER, my Lord, it cannot be deny'd, but that the Archdeacon by the Abuse of this Title, *Oculus Episcopi*, that is by winking at the Faults of some Incumbents, prying into, and aggravating the Faults of others, hath drawn divers to preach his Visitation Sermon, which else would not.

I NOW proceed to the Accessories. 96.

1. I CAME unsent, and uncall'd for, to Mr. Archdeacon, he then being in his Visitation among the Clergy, and sitting there to hear Causes.

2. I DID then, and there charge Mr. Archdeacon with Falshood and Injustice.

3. I DID at the same time lay down 100 l. in Gold upon the Table, and offer'd to lay Wagers with the Archdeacon, That he had done me Wrong.

4. I REFUS'D to perform the Submission, *conceptis Verbis*.

I CONFESS, I did these Three [first Particulars]; but not whilst Mr. Archdeacon sate in his Visitation to hear Causes. The Visitation is always kept in St. Margaret's Church in Canterbury in the Forenoon, before Dinner. This was in the Parlour of the *Chequer-Inn*, after Dinner. It is evident by the Records of their own Court, and by the Testimony of their own Witnesses, that these Things were said,

Page said, and done in the *Chequer-Inn*, after Dinner, and not at the Visitation. And beside, I do here make Oath in Truth, Justice, and Judgment, That these Three Accessories were said, and done, not in *St. Margaret's Church*, but in the *Chequer-Inn*, where I never yet knew any Visitation kept by Master Archdeacon.

97. 1. AND now, my Lord, what Fault was it for me to come to Master Archdeacon, with whom I din'd? And might I not come to your Lordships, and to these my honoured Judges, at the Side-Bar in this Hall, nay, in this very Court, uncall'd, and unsent for? I am sure your Persons, and Places are more eminent. And yet I, and some others as mean as I, have come to you, and gone from you without Offence.

2. DID I offend in charging the Archdeacon with Falshood, Wrong, or Injustice? Not at all. For I have before shew'd, that under the Name of Canonical Obedience he would have brought in arbitrary, blind Obedience. I have therefore shew'd, how he hath advanc'd his Apocryphal Postscript, private Letter, and Message, above the *Canons* of the Church, his Majesty's *Letters-Patents*, and Royal Prerogative invested in the Crown by God Himself, acknowledg'd by *Article*, *Statute*, *Canon*; nay, above a Royal Prerogative which he, and I by *Oath of Supremacy*, are both bound to maintain. And yet he hath violated it, and would have made me to have violated it, as he hath made many others

others. Is not this Falshood, Wrong and Page
Injustice? Yea, but tho' it be, yet per-
adventure, I might not tell him so much.
Yet, my Lord, I was bound to tell him 98
so much by the Word of God, by the
Canon-Law, by the Law of Nature, and
by the Oath of Supremacy, [he cites Lev.
xix. 17. *Felinus*, as above, pag. 68.] The
Law of Nature binds every one to de-
fend his own Right, and repell Injury.
The Oath of Supremacy binds me to de-
fend all Jurisdictions of the Crown, there-
fore this among the rest, That none of the
Clergy in their several Jurisdictions can go
beyond, much less contrary to the *Canons*,
without incroaching upon the Supream Ju-
risdiction of the Crown.

3. This doth likewise justify the Wa-
ger of 100 l. laid down to defend the
King's Supream, Ecclesiastical Jurisdiction,
as bound by the Oath of Supremacy. And
for that Purpose I have made Choice
rather to be fined, imprison'd, &c. than
by betraying the King's Supremacy to the
Archdeacon's Usurpations, with the High-
Commissioners, this Court, the Barons of
the *Exchequer*, and the Lords of the Coun-
cil to violate that Oath, and so to commit
Perjury. And tho' the Defendants say, I
did speak very malepertly, and irreverently
to Master Archdeacon; yet they mention
no one particular evil Word, or Deed.
Vir dolosus versatur in Universalibus. I
hope your Lordship will conceive, that
that which they say was spoken male-
C perly.

Page. perty and irreverently, was spoken, and done discreetly, resolutely, and heroically, that I might to the utmost of my Power defend the King's Supream, Ecclesiastical Jurisdiction.

99. 4. My last Accessory, my Refusal to perform the Submission *conceptis Verbis*, the Defendants pretend to be a great Affront, and Contempt both to the King's Supremacy, and to the High-Commission Authority.

I WAS therein [that is, in the Form of Submission] injoyn'd to acknowledge my Refusal to preach the Archdeacon's Sermon, at the Archdeacon's, and Archbishop's Mandate, to be a Breach of Canonical Obedience. If my Refusal to preach the Sermon be no Breach of Canonical Obedience, then my refusal to perform the Submission is no Breach of Canonical Obedience. My Oath of Canonical Obedience in the Instrument of my Admission, or Institution, runs thus: (I have it here to shew) " We admir thee, "saith the Ordinary, having first been sworn "on the *Holy Gospels*, to perform Lawful "and Canonical Obedience to Us and our "Successors, in all lawful and honest * *Mandates*. " The Persons to whom I have sworn

* I cannot but think that what Mr. Huntley here speaks of a Necessity of a formal *Mandate*, in order to enforce the Practice of any *Canon*, or to demand Obedience of the Clergy, or Laity in any particular according to *Law*, or *Canon*, to be of great Weight. This hath been the current Opinion of the Divines and Canonists of this Church, according to the known Maxim,
vix.

sworn are only to the Bishop and his Successors, not the Archdeacon. Tho' I am bound to yield lawful Obedience to all the Archdeacon's lawful and honest *Mandates*, yet not by Oath: Therefore when I violate his *Mandates*, I am guilty of Contumacy only, not Perjury. Lastly, I have sworn this Canonical Obedience, not to the *Canons* themselves, (for then every Time I break a *Canon*, I should commit Perjury) but only to the Bishop's, and his Successors *Mandates*, not to his Words, or private Letters: no nor to all their *Mandates* neither, but only to their lawful, and honest *Mandates*, [or such as are agreeable to Law and Canons.]

Now, what is a Prelate's *Mandate*? A Prelate's *Mandate*, saith Lyndwood, is a publick Instrument out of the Bishop's Court, made in the Prelate's Name, under the Seal of his Office, and the Hand of a Publick Notary: of these *Mandates* the Canon-Law maketh two Sorts, A *Mandate* for appearing [at Summons] and a *Mandate*

viz. Episcopus non loquitur nisi per sigillum. But as to the Oath of Canonical Obedience, the Form here mention'd by Mr. Humley, as impos'd by Archbishop Abbot, hath since been alter'd. I mean, the Word *Mandates* hath been left out. I have myself been Four Times Collated, and as often the Oath of Canonical Obedience, without the Word *Mandates*, if I can rely on my Memory, or the Instrument of Collation, which I still have by me. I am certainly Inform'd, that sometimes, and not very long since, our Bishops have insert'd a Clause into the Oath of Canonical Obedience, obliging the Collated Clerk to maintain all the Rights, Privileges, &c. of the See of *Canterbury*. It is greatly to be wish'd, that this Oath were always, and every-where administered in an uniform Manner.

Page date for obeying [the Injunctions, or Decrees of Court.] Accordingly, there is a twofold Contumacy. Contumacy in not appearing is committed, when we violate
 102. the Prelate's *Mandate* for not appearing at his Court. The Contumacy in not obeying is committed, when we violate the Prelate's *Mandate* injoyning us to obey some Act of his Court. Now with what Contumacy do the Defendants charge me? They only charge me with Contumacy in not obeying the Archdeacon's, Archbishop's *Mandate*, commanding me to preach the Archdeacon's Visitation Sermon.

103. Now, my Lord, if I have violated my
 miss Canonical Obedience to the Archdeacon's
 printed. or Archbishop's *Mandate*, then I have violated some *Canon*, some *Mandate*, some
 105. *Mandate Canonical* both for Matter and Form, But,

1. CAN they shew me any *Canon* that binds me to preach the Visitation Sermon? No: See pag. 35.

2. CAN the Defendants shew any *Mandate Canonical* for Matter, sent from Archdeacon or Bishop to command me to preach the Visitation-Sermon? Why, that is impossible. For seeing the *Canons* do not only not command, but forbid me [not Licensed] to preach at my own Cure, or elsewhere, the *Mandate* that commands me to preach at Visitation, must of Necessity be Uncanonical, Contracanical.

3. IF the Defendants can shew some publick Instrument out of the Archdeacon's
 or

or Archbishop's Court, made in the Archdeacon's or Archbishop's Name, under the Seal of their Office, and the Hand of a publick Notary, commanding me to preach the Visitation-Sermon (tho' that *Mandate* for Matter, be not only beyond, but contrary to the *Canons*) I will be so indulgent to them, that I will acknowledge myself culpable of Contumacy, and both of Contumacy and Perjury in disobeying such a *Mandate* of his Grace's, Canonical for Form, tho' Uncanonical for Matter. Can they do it? No, my Lord, the Defendants in their Plea, confess the contrary: They only mention three Letters written to me, to require me to preach the Visitation-Sermon, one from his Grace, another from Sir George Newman, the Archdeacon's Official, and another from the Archdeacon. But private Letters are no *Canonical Mandates*. And unless the Defendants can shew some such *Mandate*, Canonical for Form, sent from the Archdeacon to me, to command me to preach the Visitation-Sermon, they cannot make any Shew or Colour, that I have broken the Order of the High-Commission-Court. These are the very Words of their Sentence, or Order given, Febr. 8. 1626. (See pag. 3.) *Nihilominus dicta Curia alt. e Commissionis ad tempus illud reservans sibi ipsi eorum ultiores Censuras, prout occasio oblata foret, pro eo tempore tantummodo ordinavit ipsum dictum Georgium Humley super Mandatum predicti Archidiaconi Cantuar. su-*

Page

104.
6.105.
7.

Page per competente monitione ei danda ad predicandum Sermonem ad proximam Visitationem tenendam per Magistrum Archidiaconum Cantuarien. So that by their own Order, I was not bound to preach, but upon the Archdeacon's *Mandate*, and competent Warning thereby to be given me. Now, did the Archdeacon send out such a *Mandate* to warn me to preach at next Visitation? My Lords, the Defendants confess the contrary in their Plea: They acknowledge in the second Part of their final Sentence, given April 19, 1627. That *George Huntley* then alledg'd in his own Behalf, That Mr. Archdeacon had not warn'd him by a legal Process. What then do they alledge against me? Only this, my Lord, That Mr. Archdeacon had given him sufficient Warning by a publick Officer, or Apparitor: And I confess it. Yea, but where is the Archdeacon's *Mandate*, or *Process* to the Apparitor, to enable him to warn me to preach that Sermon? That, my Lord, is either shrunk in the wetting, or lost in the carrying. And then, how have I transgress'd either the Archdeacon's *Mandate*, or the

106. Order of High-Commission? An Apparitor doth then faithfully execute his Office, when he doth faithfully execute his *Mandates* according to canon 138. They have no Power to Summon any Man without a *Mandate*. Without a *Process* [or *Mandate*] there is no Contumacy. The Apparitor pretended a *Process*,

9:

cess, or *Mandate* to warn me to appear *Page*
 at the Archdeacon's Visitation, and there
 to pay my Procurations due to him for
 Visiting. But he had no such *Process* or
Mandate, to warn me to preach the Arch-
 deacon's Visitation-Sermon; but only an un-
 canonical, anticanonical Postscript, in these
 Words; *You are to warn George Huntley,*
Parson of Stouremouth, to preach at the
Time and Place abovemention'd: And this
Postscript set under the *Process*, after
 the Teste, and Register's Hand, was
 made in no Man's Name, subscrib'd with
 no Man's Hand, confirm'd with no Man's
 Seal, and is contrary to the *Canons* both
 for Form, and Matter: For Matter, to
 the 49th Canon, which forbids me, being
 not a Licensed Preacher, to preach in my
 own Cure, or elsewhere: For Form, to
 the 120th Canon, which requires the Names
 of the Parties to be cited, to be written un-
 der a general *Process* of *Quorum nomina*,
 (such as that was) and those Names en-
 tred by the Register, or his Deputy under
 the *Process*; and then subscrib'd by the
 Judge, or his Deputy. [But] here were
 not only Names, but new Matter, name-
 ly, the Preaching of the Visitation-Sermon;
 yet neither Names, nor Matter entred by
 the Register, or his Deputy, nor subscrib-
 ed by the Judge, or his Deputy.

UNTIL this Warning, on the Morrow
 I sent this Letter to Mr. Archdeacon, and he
 receiv'd it, and it was read in the High-
 Commission-Court by Dr. *Ducke*, one of the

Page Advocates for the Office against me,
April 19, 1627.

To the Right Worshipful Mr. Doctor King-
ley, Archdeacon of Canterbury, give these.

SIR,

“ I Marvel that being a Member of
“ High-Commission, you should no
“ better observe the Order of that Ho-
“ nourable Court. Their Order is, That
“ you must command me to preach a
“ Visitation-Sermon, and that I must o-
“ bey your Command. And therefore
“ as I must obey according to Custom;
“ so you must command according to
“ Custom: What the Custom in this
“ Point, is Sir George Newman’s Answer,
“ ad 7m. Articulum declares, who there
“ deposeth, That for these thirty Years of
“ his own Knowledge, the Archdeacon
“ of Canterbury, for the Time being, I
“ hath sent Proceſs by his Apparitor to
“ command the Ministers to preach at his
“ Visitation. Do you observe this Custom,
“ command me by Proceſs to preach at
“ the Visitation; and I will preach a
“ Sermon for the Visitation as effectual-
“ ly as I can. Your Apparitor shew’d no
“ Proceſs, and no Proceſs to command me
“ to appear at your Visitation; no Proceſs
“ to command me to preach at your Vi-
“ sitation. When you conceive meanly,
“ and not evilly of me, you conceive as
“ I myself do, and both aright: Yet, if

" I may speak it without Arrogancy, I Page
 " am not so stupid and obdurate, but that I
 " can discern between the Text and the
 " Marginal Note, which corrupts the
 " Text; between the Canon and the Apo-
 " crypha; between the Process for my Ap-
 " pearance, made in the Archdeacon's
 " Name, confirm'd with the publick Seal
 " of his Court, subscrib'd with the Hand
 " of his Register, and an unwarrantable,
 " and unjustifiable Additament or Post-
 " script, which has neither Hand nor Seal
 " to it, whose Author is *Anonymous*, whose
 " Authority *Apocryphal*, which hath no
 " Warrant, or Foundation in the *Process*,
 " nay, which quite oustrips the *Pro-*
 " *cess*. The *Process* commands me on-
 " ly to appear, and pay Procurations, 109
 " which saith the *Process*, are due to you 11
 " for Visiting; that is, saith the *Canon-*
 " *Law*, for Preaching and Correcting,
 " *Decretal. Lib. III. Tit. 39. De Censib. Sc.*
 " *paragr. parro. & Sext. Lib. III. Tit. 20.*
 " *De Censib. Sc. c. 1. paragr. sane. &*
 " *paragr. Hanc autem.* But how the Post-
 " script commands me to preach, which
 " is more than to appear: It is to appear,
 " and to do something else, namely, to
 " perform one Part of the Visitor's Duty,
 " for which I pay my Procurations. If you
 " cannot command me to appear without
 " *Process*, can you command me to
 " preach, which is more than to appear,
 " by a Postscript, which is less than *Pro-*
 " *cess*? which is no *Process*, no Part of

Page. " your *Process*. If you command me
 " by *Process* to pay Procurations, which,
 " say you, are due to you for Visiting,
 " that is, for Preaching and Correcting,
 " will you by a Postscript command me
 " to do the principal Duty, namely, to
 " preach at the Visitation, for which I pay
 " my Procurations? This Postscript then
 " is faulty in a double Respect, it ex-
 " ceeds the *Process*, and is contrary to the
 " *Process*. It exceeds the *Process*, be-
 " cause it commands me to preach at your
 " Visitation, the *Process* commands me
 " to appear only. It is contrary to the
 " *Process*, because it makes it my Duty
 " to preach at your Visitation, the *Pro-*
 " *cess* makes it yours. It is your Duty to
 " visit, that is, to preach, and correct,
 " and for that it requires Procurations.
 " And what small Authority your *Process*
 " and Postscript have to command me to
 " preach at the Visitation, the Wisdom
 " of the Advocates may teach you, who
 " would not produce either in open Court,
 " tho' they were thereunto urg'd by my
 " Counsel; for thereby they should have
 " discover'd the most palpable Usurpa-
 " tion, who command that by Postscript,
 " which you dare not do by *Process*; and
 " yet pretend you do it by *Process*, be-
 " cause the *Process* and Postscript are both
 " written upon one Sheet of Paper, al-
 " tho' the Postscript hath no Correspon-
 " dency with the *Process*, because it is
 " not made in your Name, confirm'd
 " with

" with the Seal of your Office, subscrib'd Page
 " with the Register's Hand, neither hath
 " any Warrant, or Confirmation in or by
 " the *Process*. If you will have me take
 " this Postscript for a *Process*, you must
 " either put it into the Body of the *Pro-*
 " *cess*, or else, like a *Process*, make it in
 " your own Name, confirm it with the
 " Seal of your Office, subscribe it with
 " your Register's Hand, and then * I
 " will take it for a *Process*, and obey it
 " as a *Process*: Without one of these, you
 " neither observe the Order of Court,
 " nor the Custom which you strive for,
 " and in your *Brief* alledge Sir George
 " Newman's Testimony to prove it. Do
 " you observe both these, and I will break
 " neither. And so desiring you to com-
 " mand me by *Process* to preach at your
 " Visitation, or to provide a Sermon else-
 " where, I commend you to the Almighty,
 " and rest

Yours according to Law,

Stourmouth, Feb. 23.
 1826. the next Day
 after the Apparitor
 was with me.

Custom, and Canon-
cal Obedience,

George Huntley.

Now

* I know not how to reconcile this to several Parts
 of his Book, which import, That by submitting to
 the Archdeacon's Injunction to preach, he should have
 committed the Sin of Perjury, and I know not how
 many more. Hence it is a *new* *Device*, challenging the
 Archdeacon

Page Now, may it please your Lordship to knit, and unite these Severals together: Is it not most clear that in refusing to preach that Visitation-Sermon, I have neither transgressed *Canons*, nor Canonical Obedience; nor the Archdeacon's *Mandate*, nor the Custom, nor the Orders of the High-Commission-Court, nor the *Oath of Canonical Obedience*, and therefore am most free not only from Contumacy, and Perjury; but also from all Anticanonical Disobedience? And why then, my Lord, should I have submitted to the Submission, and contrary to most evident Truth, and my own Conscience have acknowledged myself culpable of Disobedience, Contumacy, and Perjury? Nay, further, if I had yielded to the Submission, I must have advanc'd the Archdeacon's Postscript above the *Canons* of the Church, above his Majesty's *Letters-Patents*, above Royal Prerogative acknowledg'd by *Articles*, by *Statute*, by *Canon*: Nay, above Royal Prerogative, which I am by Oath bound to maintain; so that I could not have submitted to that Submission without palpable Perjury.

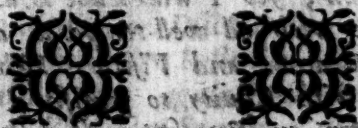
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Archdeacon to do what he knew he dares not to do, as he intimates before in this Letter. (For by signing, and executing a *Process*, for which he had no Precedent, he had laid himself open to the Courts of Westminster-Hall) or else we must say, he speaks here without due Thought, or Guard, as having not study'd or consider'd the Cause fully, as he had afterwards.

[The 5 remaining Pages are spent in reminding the Judges of their Delays of Justice, insomuch that this was the first Hearing he had been able to obtain in Twelve Tears and full Three-quarters Time; and to set it home to them, he cites Julian the Apostate's 35th Letter: He complains, he could get no Solicitor, Attorney, or Counsellor to assist him. He bids them take Care lest their Title of Justices be not a Reproach to them, as that of Holiness to the Pope. He tells them how they may take away the opprobrious Distinction of Court Christian, and Court not Christian, viz. Doing Justice; and he strictly charges them to do it, not only now but always; as remembering that they themselves were to be judged.]

He subjoins those Words of St. Ignatius, in the third Chapter of his Epistle to Polycarp, which I thus translate.

Stand firm as an Anvil, when it is smitten: It is the Part of a great Combatant to be bear, and yet to overcome:



A Brief REFLECTION upon Mr. Huntley's Plea.

THO' I cannot undertake to support Mr. Huntley's Argument in all its Branches; yet I may dare affirm, That in the main he hath made good his Point. I think it very evident, That he who cannot give a Man permission to preach, can much less command him to do it. But the Archdeacon cannot give a Man permission to preach, I mean, he cannot grant him a License to this Purpose, and therefore much less hath he Authority to command him to preach. Nay, it will scarce be allow'd, that a License to preach, if an Archdeacon could grant it, did imply any Obligation laid on the Licens'd Clergyman to preach; it only enables, or qualifies him to do it; but hath no binding Force in it. And I am persuaded, that no Clergyman is by Law, or Canon tied to preach to any but his own Parishioners.

BUT suppose an Archdeacon have an Authority to do this; yet I will leave it as a Scruple of Conscience with all well-temper'd, and compassionate Archdeacons and Visitors, Whether it be reconcilable with Equity to punish a Brother of the Clergy for an Excess of Modesty, or a just Sense of his own Insufficiency to instruct his Equals, or Betters. For he who humbly declines an Office of this Sort, should in common Charity be presum'd to act upon such Motives as have been

been just now mention'd, if there be no Evidence to the contrary. And certainly, of all those Sorts of Consciences, which plead for Indulgence, and Toleration, there are none that do so well deserve it as the Humble and Modest.

AS for those of the Clergy, who are competently well assured of their own Sufficiency, and desire to live easy with their Superiors, as well as with other Men, they will never refuse to serve their Archdeacon, or other Ordinary by Preaching for him once in a Life-time, unless they labour under such Scruples of Conscience, as Mr. Huntley did: And I am very sure, his Reasons for Non-compliance were as good as any of theirs, who are thought now among us to have the best Plea for Liberty of Conscience, as they call it.

I have only one Thing more to observe, which is, That if Archdeacons are pleased to condescend to ask any of their Clergy to preach (as some of them do) instead of imperiously injoyning, or commanding them, it is scarce credible, that they could be deny'd, except by such as have an incurable Aversion from appearing in Publick, or are full of Resentment on account of former Misunderstandings, or Discourtesies. It is very obvious to make this Reflexion upon all Mr. Huntley's Allegations against the Lawfulness of Preaching a Visitation-Sermon, that they are grounded upon the Archdeacon's assuming to himself a Power and Authority, which the Laws, and Canons do not give him, nay, which they seem to deny him. But if Archdeacon King-
ley

they had design'd to turn his Commands into Requests, he had by this Means disarm'd Mr. Huntley of all his Arguments on this Head, and probably melted him from a stiff Adversary into an obsequious, humble Servant. For Clergy-Men, as well as all others, cannot but desire to stand fair in the Eyes of their Superiors. But,

Arcus nimis intensus rumpitur.



THE

THE
C A S E
O F
OCCASIONAL DAYS,
AND
P R A Y E R S :

Containing,

A DEFENCE for not Solemnizing the

Accession - Day,

By Reading the New Form, and for
not Using Occasional Prayers.

By JOHN JOHNSON, A.M.

Vicar of Cranbrook in the

Diocese of CANTERBURY.

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Vicar of Chesham in the

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THE
PREFACE.

 ON October 28th. 1715. I was cited to appear before the Archdeacon of Canterbury on November the 2d. next following in the Forenoon to make Answer to divers Articles then to be exhibited against me. I excused my Appearance on that Day, by alledging my Obligation to officiate personally at my Cure of Appledore on the Feast of All-Saints. For I could not possibly after having performed Divine Offices at Appledore (as I had promised to do) be soon enough at Canterbury on the Day following, to make my Appearance before the Archdeacon within the Court Hours. But I promised to be there on the Court-Day next following. I accordingly did actually appear before the Archdeacon at his Court held in St. Margaret's Church Canterbury, on Novemb. 24th. The Archdeacon ask'd me whether

The PREFACE.

I had observed August 1st. as the Day of the King's Accession to the Throne, by reading the Form of Prayer, and Thanksgiving provided for that Occasion. I desired first to know all the Articles charged against me. For it would be to little purpose to make Answer to one, unless I could defend myself against the rest. The Archdeacon said he knew of no other Article but that which he had mention'd. I desir'd to know whether the Process were ex officio, or at the Instance of some Party: He said, he summon'd me by the express Order of my Lord Archbishop of Canterbury, therefore he insisted on a direct Answer to the Question first proposed, viz. Whether I kept the King's Accession-Day, &c. My Answer was, that I read the Prayers for the First of August, as prescribed by the Book of Common-Prayer, as I do of course for every common day, but did not use the New Form. The Archdeacon ask'd me why I did not read the Form provided for that Occasion? I answer'd, It is my humble Opinion, that it is at every Clergyman's Discretion, whether he will use That Form, or not. This
the

The P R E F A C E.

the Archdeacon commanded the Register to write down apud acta, as my Answer; and he did write it down, and by the Archdeacon's direction read it to me, and ask'd me, if that was my Answer. I declar'd, It is my Answer, and I will stand by it; and crav'd leave to read what I had to say in Defense of it. The Archdeacon did not easily consent to this. I express'd my wonder, that there should be any Court in England where Men were Conven'd and Accus'd, but not permitted to make their Defense; at last I had leave to read it. But when I mention'd the King's Supremacy in the second Paragraph, the Archdeacon interrupted me, and said, He did not sit there to hear the King's Supremacy opposed. I replied that if I was an Adversary to the King's Supremacy, yet I should not choose that Time, and Place to declare my Sentiment, and that Mr. Archdeacon might rest secure, that it was not in my Thoughts to deny it; but only to explain my Notion of it. Yet it was a considerable time before I was permitted to proceed in reading my Defense, till at last I insisted upon it as
my

THE PREFACE.

my Right, both as an English-man and a Clergyman, to be heard. The Archdeacon ask'd me, if I would give him a Copy of my Defence, in case I were permitted to read it. I answer'd, If the Archdeacon would send his Clerk to me to write it out, I was very willing he should have a Copy: Upon this Condition he consented that I should proceed in reading my Defence, as accordingly I did; but not till I had first confess'd to the Archdeacon, that I had not only omitted the new Service on the Accession-Day; but had also forborn the use of the Occasional Prayers, lately sent me by the hands of the Apparitor, and had declar'd that I intended what I was now going to say as my Defence for not reading those Occasional Prayers, as well as for not using the Service on the Accession-Day.

NB. The Copy of my Defence taken by the Archdeacon's Clerk is not in all Points exactly the same with the following; but the Variations are so small as not to affect the Argument, or to be material in any respect (to the best of my Knowledge, and Remembrance) but only to express my Meaning more fully and clearly.

THE



THE DEFENCE.

Mr. Archdeacon,

I Might plead, That neither the Day, nor the Prayers were appointed by any direct Command of the King, or of any other Person; at least I never saw any such Command or Precept. I dare not say, if I had seen one, that I should have thought myself obliged fully to comply with it; Because

SECT. I.

I. THE King's Proclamation (which is the usual Form of appointing such Days and Prayers) hath not the Force of a Law in England. Nor is there any Law to my knowledge now in being, by which the King is empower'd to appoint any such Days, or Prayers. And he who is punish'd without Law, is punish'd contrary to Law.

SECT. II.

SOME may think that the King's Supremacy is sufficient to enable him to injoyn the Observa-
tion

tion of a Day, or the use of some additional Prayers. But then I must have leave to observe, That that must be a very singular Instance of Rôyal Supremacy, which is exercised without either Parliament, or Convocation, or Court of *Delegates*, or the Courts in *Westminster-Hall*. I know no other Instance of Supremacy which is not exercised in some one of those Courts. If this be an Instance of the King's Supremacy, exercised by Proclamation only, it is very singular in its Kind. The King is Supreme in Ecclesiastical Causes, only as he is so in Temporal ; so His Title bears, *Supreme in all Causes, Ecclesiastical as well as Temporal*. If the King by His Proclamation only cannot enjoin any Thing under a Penalty to His Temporal Subjects, then there is no Ground to believe that He can do it to His Ecclesiastical Subjects.

S E C T. III.

I know it is said, That K. Henry VI's Accession-Day was observ'd : But that it was commanded by *Proclamation*, or that the King order'd a new Service for the Day, is not said, nor can it be believ'd. It seems probable that it was only a popular Holy-Day, taken up by general Consent on account of its being the Day of *Richard III's* Death, and the Union of the two Roses. That our Kings since the *Reformation* have caused the Days of their Inauguration to be celebrated, we are inform'd by the second of the *Canons* made 1640. And farther, a particular Form of Prayer, and Thanksgiving was then appointed for this Purpose, as we learn from that *Canon*. But then

we

we have there these observable Words, which deserve our Consideration, " The Holy Synod doth strictly require and charge, and by Authority hereof ENABLETH all Archbishops, Bishops, Archdeacons, &c. that they inquire into the keeping thereof, in their Visitations." From this it appears, that Ordinaries before the making of this Canon did not think themselves enabled to inquire into the keeping of the King's Accession-Day; if they had, there had been no Occasion to make an enabling Clause to this Canon. Now it is well known that this Canon is annulled by Statute: And therefore before Ordinaries proceed to censure Men for the not observing such a Day, it is, I humbly conceive, necessary, that they should have some new Statute to enable them. A Canon will not be sufficient for this Purpose, as will presently appear.

SECT. IV.

I am not sensible that K. Hen. VIII, Edw. VI. Q. Mary, Q. Elizabeth, or K. James I, did injoin any particular Form of Prayer to be used on their Inauguration-Days; yet several of these Princes did injoin Prayers over and above those contain'd in the Liturgy, especially Q. Elizabeth, and K. James I, did this. The latter injoin'd a Form to be annually used on the Day of his Deliverance from Gowry's Conspiracy; and another on Nov. 5. for the Discovery of the Gun-Powder Treason. And I am assured that these Forms are still extant; tho' Mr. Archdeacon Gibson thinks that the Manner and Form for keeping the 5th of November, was by the

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Statute

Statute left to the Minister's Discretion, *Code* pag. 283. The first observable Instance of a stated Office of Prayers, publish'd to be used in Churches merely by Royal Authority, (excepting K. Hen. VIII's *English Litanies*) is that in Bishop Sparrow's Collection of *Canons*, under the Title, *Celebratio Cana Dominica in Funebris*. This was authoriz'd by Q. Elizabeth, who caused it to be inserted into an Edition of the *Common-Prayer-Book* in *Latin*, A. D. 1560. Yet it is evident, her Authority was not thought sufficient to continue this Office, as a Part of the *Common-Prayer-Book*. For I do not find it in any Edition, save that before-mention'd. Yet at this Time we have no less than Three Annual Offices added to our *Liturgy* (beside that of the *Accession-Day*) by mere Royal Will, and Pleasure. For tho' the Convocation 1562, revised, or compiled, and published Offices for Nov. 5. Jan. 30. May 29. yet these Offices have since that Time been much alter'd, without any Concurrence of Parliament, and Convocation. Now, with Submission, I think a Clergyman may as well be censured for refusing to celebrate the Sacrament at a Funeral, according to Q. Elizabeth's Order, as for not using these three Forms at the End of the *Common-Prayer-Book*, as alter'd by Authority of K. James II. (as were those for Jan. 30. and May 29.) or that of K. William and Q. Mary (as was that for the 5th of Nov.)

SECT. V.

WHEN K. Henry VIII. publish'd his *English Litanies*, he was in effect an absolute Prince: for

for his *Proclamations* had the Force of a Law, by Virtue of a *Special Statute*. All Princes that have by their mere Will and Pleasure publish'd such Prayers since his Time, have done this without any such *Special Statute*. The Forms now mention'd, in our present *Liturgie*, are expressly declar'd to stand there by *Royal Will and Pleasure*. But, Sir, I hope some better Ground than Royal Will and Pleasure shall be shew'd me before I am punish'd for Noncompliance. For Royal Will and Pleasure is no Law. And I take it to be an unexceptionable Rule in *foro externo*, as well as *interno*, That where there is no Law, there is no Transgression.

II. But I have another, and a greater Reason for not thinking myself oblig'd to submit to the Observation of the Day, or to the Use of the Prayers, *viz.* That they are not only beside the Law, but contrary to the express Letter of the Law.

SECT. VI.

I. I SHALL begin with the Appointment of the Day: Now this is directly contrary to the Words of the *Statute*, 5, 6 *Edm. VI. cap. 3.* by which it is Enacted, That "All the Days there-after mention'd shall be kept, and commanded to be kept *Holy-Days*, and NONE OTHER." Among those *Holidays*, the *Accession-Day*, even of that King is not mention'd, and I am yet to seek whether the *Accession-Day* of that King was at all observ'd. After a recital of the *Holidays*, it is added, NONE OTHER DAY SHALL BE KEPT, OR COMMANDED TO BE KEPT HOLIDAY.

In the next Paragraph the *Fasting-Days* are particularly express'd, and it is added, That NONE OTHER EVE, OR DAY SHALL BE COMMANDED TO BE FASTED. It is true, some other *Holidays*, and *Fasting-Days*, not mention'd in this *Act*, have since been put into the *Kalendar* and *Liturgy*; but then this hath been done by Authority of Parliament, and Convocation. But neither Parliament, nor Convocation have yet inserted the *Accession-Day* into the *Kalendar* or *Liturgy*. If the King by Virtue of his Supremacy, before the making of this *Act*, might have appointed other *Holidays* or *Fasting-Days*; yet by this *Act* the Supremacy is so limited, that it cannot for the future be exercised otherwise than in Parliament only. And this appears not only from the foregoing Words of the *Act*, but by a following Clause; in which the Parliament provides, That, "the *Knights of the Garter* might keep the Feast of their Order for "as many Days in the Year as the King and "they shall think convenient." If the two Houses had not thought that by the foregoing Clause, the King was restrain'd as to the Power of injoyning *Holidays*, it will be impossible to give any Account why they should make a special Provision, for the King's Power of making *Holidays* for so small a Body of Men (small, I mean, in number) as the *Knights of the Garter* have ever been. If the King without such a particular Clause inserted into the *Act* was not intrusted with the Power of making Annual *Holidays* for one Society of Men; of which he was Head, much less for the whole Nation.

S E C T. VII.

2: As for the Use of other Prayers instead of, or over and above those prescrib'd in the *Liturgy*, it is expressly contrary to the 3 *Statutes of Uniformity*, which I crave leave to call the three *GRAND CHARTERS* of the *Church of England*, as by Law establish'd. (1.) The *Statute 2, 3 Edw. the VI. cap. 1.* expressly declares, That "All Ministers shall be bound-
 " en to say and use the *Mattins, Even-
 " Song, Administration of each the Sacraments,
 " and all Common and Open Prayer, in such
 " Order and Form, as is mention'd in the said
 " Book of Common-Prayer, AND NONE OTHER,
 " OR OTHERWISE."* (2.) The *Statute 1 Eliz. c. 1.* inforceth the former *Act* of *Edw. VI.* and ordains, "That all Ministers shall be bound to
 " say, and use the *Mattens, Even-Song, Ad-
 " ministration of each the Sacraments, and
 " all other Common and Open Prayer, in such
 " Order, and Form as is mention'd in the
 " said Book so authoriz'd by Parliament, and
 " NONE OTHER, OR OTHERWISE."* (3.) The
 " *Statute 14 Charles II.* enacts, "That the
 " former good *Laws and Statutes* of this Realm,
 " which have been formerly made, and are
 " still in Force for the Uniformity in Prayer,
 " shall stand in full Force and Strength to
 " all Intents and Purposes whatsoever, for Esta-
 " blishing and Confirming the said Book, —
 " herein before-mention'd to be joyned, and
 " annexed to this *Act.*" And this Parliament was so cautious of any the least verbal Alteration, that they allow'd not the Names even of

the King or Queen to be alter'd, but by lawful Authority.

SECT. VIII.

UPON the whole it is evident, that nothing less than an *Act of Parliament*, can take off the force of these *Statutes*, so as to oblige any Clergyman to observe such Days, or to use such Prayers as were not contain'd in that Book, as authoriz'd by Parliament. The *Canon* of 1640, was not sufficient to enable Ordinaries to Censure either Clergymen, or Laymen in Opposition to the *Statutes* of K. *Edw.* and Q. *Elix.* For an *Act of Parliament* is the greatest Authority by which any thing can be commanded, or forbidden in the Church, or State, excepting that of the Holy Scriptures only. I crave leave to say, That a *Statute* is of such Force, that no *Canon*, Custom, or Consent of Clergy, and People can stand before it; no, nor even the Royal Supremacy itself. Some *Statutes* leave in the King a Power of dispensing in some Cases *pro hic & nunc*; and Dispensations granted by Virtue of such *Statutes*, are Legal Dispensations. But in these *Statutes* there is no such Provision made: And therefore I conceive, there can be no Power in the Prince, or in any Judge Ecclesiastical, or Temporal, to punish any Man for not transgressing these Laws.

SECT. IX.

YET it is certain, the Crown hath now a Prerogative, tho' not a Legal Power of dispensing with these *Statutes*, by appointing Occasional *Holidays*, and *Fasting-Days*, and directing Prayers.

Prayers to be drawn, and used on those Days. This is sufficiently prov'd from the Practice of our two Houses of Parliament, who do always (if sitting) subscribe to such Appointments of Royal Authority, and sometimes petition the Crown to order such Religious Solemnities. This cannot be done by Law; because there are several *Statutes* against it; therefore it must be done by a *Relaxation of the Law*, and this is the very Definition of a Dispensation. I cannot now remember any other Instance, in which the Crown doth exercise such a Dispensing Power, I mean against the *Statutes*, without an enabling Clause.

S E C T. X.

Q. *Eliz.* when she inserted the Office for the Communion at Funerals into the *Latin Common-Prayer-Book*, declares in her *Letters Patents* prefix'd to that Book, " That she had order'd this " to be joyn'd to the *Common-Prayer-Book*, that " it might be sung or said at the Funerals of " Christians, THE ACT PUBLISH'D IN THE " FIRST YEAR OF HER REIGN NOTWITH- " STANDING." Which is the (now abhorred) ancient Form of Dispensation. However, by this Dispensing Power, allow'd by the two Houses of Parliament, they who use these Forms, or observe these Days, are exempted from the Punishments inflicted by these *Statutes*.

S E C T. XI.

BUT then, let me have leave to observe; That Dispensations, especially such as are above, and contrary to the Letter of the Law, carry

no binding, or obliging Power with them; they lay Men under no Restraints without their own Consent: They have only a relaxing or loosening Force. And indeed it is absurd to suppose, that a Man can be bound in Law, or Conscience to break a Law, except that Law be contrary to the Law of G o d. They are (or ought to be) safest, who want no such Dispensation. I suppose there never was, nor can in Reason be any Law which obligeth a Man to perform an Action, that cannot be done without a Dispensation.

S E C T. XII.

I Must farther profess my Hopes, that no such legal Power of dispensing with the *Acts of Uniformity*, and enforcing the Use of such Occasional, Extraordinary Prayers by Censures, or Punishments, shall ever be granted to the Crown. For by this Means the Court may at Pleasure insert new Doctrines into our publick Devotions. And as for myself, I had much rather the Crown had Power to lay Taxes upon my Estate, than upon my Conscience. As it is the Privilege of an *Englishman* to pay no Taxes, and be bound by no Laws but what are agreed to by his Representatives; so I take it to be the Privilege of an *English* Clergyman to have no Forms of Devotion forced upon him, but what he hath approv'd by his own Subscription, or by his Representatives.

S E C T. XIII.

BUT if the Two Houses of Parliament shall consent to Enact, or the Judges in *Westminster* shall

shall declare, That all Ministers are, or shall be bound by Law to read all Prayers in their Churches, which are, or shall be sent them from Court, under very severe Penalties; I humbly conceive it will concern all Clergymen to declare, That they read them (if they read them at all) only as enjoyn'd them by their Superiors, and not offer them to God, as the Sense or Desire of their own Hearts. Their publick Declaration may free them from the Imputation of Hypocrisy in the Eyes of equal Judges, tho' nothing less than such a Declaration can. If I could have reconcil'd myself to the reading of them, in the Manner aforesaid, without such a Declaration, I might have saved myself the Trouble now given me on this Head.

SECT. XIV.

As to the Prayers, which have been of late dispers'd, I have this in particular to say; That there needs a greater Authority to enforce the Use of them, than that whereby the Oaths to the Government are impos'd. For these Prayers would oblige him that useth them as such, to express so very high and extraordinary Degree of Zeal and Affection for the Government, as the Oaths do not oblige a Man to; and indeed to such a Degree of Zeal and Affection, as cannot properly and effectually be commanded by the greatest humane Authority.

SECT. XV.

I WILL say but one Thing more, and it is

this; The 36th Canon obliges Clergymen to promise under their Hand, That *they will use the Form in the Book of Common-Prayer prescrib'd, and NONE OTHER.* I hope to escape Censure, at least, for being true to the *Law, and Canon,* and my own *Promise.*

THE Archdeacon declar'd, He did not Censure me; but he would lay my Answer before his Grace the Archbishop. Yet he tender'd me a printed Copy of the Occasional Prayers, and admonish'd me to read them in my Church. I desired to be excused from taking them into my Hands, for, I said, I had no occasion for them. There were many other Things said by the Archdeacon and myself; but I choose to publish nothing but what is pertinent to the Occasion. I never heard more of this Matter.

Some Explanations and Additions to the foregoing Defense.

IN the Beginning of the Defence, I say, That tho' I had seen a direct Command, or Precept to observe the Day, and to use the Prayers; I dare not say, I should have fully complied with it. For it may happen that Part of such Proclamation, or Precept may be legal, as if it order a Thanksgiving to be solemnly kept on a Sunday, or some other Feast of the Church. For in this Case the solemn Observation of the Day is injoy'n'd by Statute, and therefore must by

By Law, Canon, and good Conscience, be kept accordingly. If the Proclamation require a Friday to be observ'd as a publick Fast, the Proclamation is supported by Law. For every Friday is a Statutable Fast. If any Form of Prayer or Thanksgiving among them that stand between the Litany, and the Collects, Epistles, and Gospels, be enjoyned to be used, it concerns the Clergyman to comply with this Part of the Office. The Rubrick before the Communion-Office orders that to be used not only on *Ash Wednesday*, but at other Times, as the Ordinary shall appoint. If therefore any Part of that Service be inserted into any New Form, the Clergyman is oblig'd to conform to the publick Direction in this Point. And the like may be said of the Litany, which is to be said whenever the Ordinary directs. And the Common Law calls the King Supreme Ordinary, and it may be said that the Bishop, by sending any New Form by the Hands of his known Messenger, the Apparitor, does injoyne the Observation of the Day, and Use of the Prayers, as well as the King, and in the Canon Law, the Bishop is most properly the Ordinary.

SECT. IV. I observe, That Q. Elizabeth and K. James I. injoynd Prayers over and above those contain'd in the Liturgy. Q. Elizabeth did this under the Umbrage of the last Clause but one of the Statute of Uniformity, made in the first Year of her Reign, by which
 " She was impower'd, with the Advice of her
 " Commissioners, or Metropolitan, to ordain
 " such other Rites and Ceremonies as might
 " be for the Advancement of God's Glory, &c."

Yet

Yet there is no mention of Prayers in this Clause. *K. James* follow'd this Pattern, and made several Additions to the *Liturgy* without Concurrence of Parliament, or Convocation. Yet the Clause which seem'd to Countenance *Q. Elizabeth*, as to this Point, makes no mention of her Heirs, and Successors and therefore all the Power granted by that Clause, died with her.

IN the same Sect. I observe, That the first notable Instance of Prayers publish'd by Royal Authority after *Henry VIII's Liturgy*, was *Q. Elizabeth's Celebr. Can. Dom. in Funebr.* yet Archbishop *Cranmer*, on the Occasion of several Tumults, publish'd a Prayer to be used in Churches; which yet he recommended, rather than injoynd: The *Act of Submission* restrain'd the Bishops and Clergy in their Power of making *Canons* only. Till *K. Edward's Act of Uniformity* was pass'd, the Archbishop might think himself enabled by his Metropolitcal Authority to compose, and publish Prayers for the Use of Churches, within his own Province. For it hath been a prevailing Opinion, tho' not true, That the Metropolitan had Power to alter, or reform the publick Devotions of the whole Provinces.

ADD to what is said in the same Sect. concerning the *Forms* for the three stated Days: The *Forms* for the 30th of *Jan.* and 29th of *May*, were alter'd much for the better by Archbishop *Sanicroft*, and some others, in *K. James II's* Reign. That for the 5th of *Nov.* was put into its present Dress, by I know not whom, soon after the Revolution. It is much to be lamented that so many of the Clergy have un-
cau-

cautiously fallen into the Use of all the Three, while they were under no Obligation of Law, or Conscience for the doing of it. What ill Use hath been made of our Easiness in this Particular, to their great Reproach, their Enemies know too well. Yet all good Clergymen will think themselves oblig'd in Conscience, as well as by *Statute*, to solemnize these Days. But I cannot think it adviseable to use *Forms* not duly authoriz'd, but rather so much of the old *Forms* drawn in Convocation 1662, as may be consistent with the present State of Things. The whole *Offices* are not suited to the Times as they now are, especially the *Form* for 29 of May. These *Forms* are in K. Charles the Second's *Common-Prayer-Books*, Printed before the Year 1685.

ADD to Sect. VII. where I speak of *Forms of Prayer*, instead of, or over and above those contain'd in the *Liturgy*. In a sorry *Pamphlet* printed soon after I deliver'd this Defence, and which I never saw but once, and so have forgot the Title of it, an Objection is produc'd against me, and other Clergymen, out of Bishop Gibson's *Code*, pag. 306, which is as follows; " In 1 *Jacobi II.* an Indictment for using "*alias preces, atque alio modo* in the Church, "*seems to have been judg'd insufficient; be-* "*cause the Prayers may be upon some extra-* "*ordinary Occasion, and so no Crime. And* "*it was said, the Indictment ought to have* "*alledg'd, That the Defendant used other* "*Forms of Prayer instead of those injoyn'd,* "*which were neglected by him. For other-* "*wise,*

"wise every Parson may be indicted that
 "useth Prayers before his Sermon, other than
 "such as are requir'd by the *Book of Common-
 "Prayer.*" I dare say, the Man that objected
 this Case against them that refused to read the
New Forms, suppos'd that we were for indicting
 or punishing all that read them; if not, to
 what Purpose was this Case cited? But to shew
 this Man how much he is mistaken in applying
 this Case to us, let me observe, That if the
 Clergyman in the Case mention'd had been in-
 dicted for using other Prayers, instead of
 those injoyn'd by the *Book of Common-Prayer*, the
 Inditement would have been sufficient, if we may
 believe the Reporter. But now he that complies
 with the *New Form* for the *Accession-Day*, must
 use the *Collects* therein appointed, instead of the
Collect for the Day, beside the *Venite*, *Psalms*,
Lessons, *Epistle* and *Gospel* there provided, in-
 stead of those prescrib'd by the establish'd *Li-
 turgy*; and therefore, according to this Case,
 the Clergyman indicted for using the *Accession-
 Form*, must have been found guilty in Law.
 And let him that urg'd this Objection find any
 Cure for this Guilt, if he can, beside that pro-
 posed Sect IX. of the foregoing Defence. And
 that Cure is not from Law, but from Preroga-
 tive. If a Clergyman doth not transgress the
Acts of Uniformity, by using other *Forms*, and in
 another Manner, nor by using other Prayers in-
 stead of those injoyn'd, then it is impossible that
 any Man can be guilty of transgressing these
 Laws; and the Dissenting Teachers are as good
Conformists, as the most conscientious Clergy-
 men. But, says the Case, if an Indictment for
 using

using other Prayers, and in another Manner than the *Common-Prayer-Book* requires be a sufficient Indictment, then a Parson may be indicted for using a Prayer (of his own) before Sermon. I am very willing to allow the Consequence. And I am very sure no good Reason can be assign'd why the Indictment should not be return'd *Billa vera*. If it could be prov'd from this Case, that a Clergyman was indictable for neglecting to use *Occasional Forms*, then it would be for the Purpose of those that alledge it; but the contrary Conclusion may be rather inferr'd from these Premises. In truth the Case proves nothing but this, That the Clergyman indicted met with a very favourable and easy Judge. For it does not appear that he had any Dispensation for his Non-conformity.

As to Sect. XV, I suppose no Clergyman need be told, That they to whom any Promise is made, have Power to dispense with the Promisor, either in whole, or in Part. (When I say in Whole, I mean only for once, and away, or *pro hic, & nunc*, as the Lawyers speak. For we must make a Difference between the King's dispensing with a Law, and his abolishing of it.) The Promise of Conformity is made to the King, (whose are the Laws) or to the Bishops, or both. And when the King, and Bishops, or the Bishop under whose Jurisdiction the Clergyman lives, and to whom he made the Promise, consent that he should depart from it, he may safely do it. But no Man is bound to do all he may do.

I SHALL not conceal from my Reader an Argument against all here advanc'd by me, which

comes from a Learned, Worthy Hand, to which I pay a singular Regard. The Argument is drawn from a Custom, or general Practise suppos'd to have obtain'd in all Ages, for Bishops to alter, or new-form the *Liturgy* for their own Diocesess. This Gentleman asserts, that this Privilege prevail'd here in *England* before the *Reformation*, which he proves from *Osmund's* making a *Liturgy* for his own Diocese of *Sarum* toward the End of the XIth Century; and from the several *Uses* which prevail'd in this Province, viz, of *Hereford*, *Bangor*, and *Lincoln*, besides that of *Sarum*. For he supposes these *Uses* to have been first composed by some one Bishop of these several Sees; which is indeed probable, and that it was at the Discretion of every *English* Diocesan to chuse which he pleas'd of these *Uses* for the Churches within his Diocese. And tho' he owns, That the *Statutes of Uniformity* have so restrain'd the Power of Bishops, that they cannot now alter any Part of the Stated *Services*; yet they may make Additions, and recommend, tho' not injoin these Additions to the Use of their Clergy: This he proves from Archbishop *Cranmer*, *Parker*, *Grindal*, and *Whitgift's* Practice, who publish'd several Prayers, &c. not only for the Use of their City of *Canterbury*, but for their whole Diocese, and even Province; and Bishop *Aylmer* of *London*, did the same for that Diocese, and from hence he concludes that our Bishops may do the same. To all which I humbly answer:

It must be own'd that from the latter End of the IVth Century, Bishops did alter their *Liturgies*.

Liturgies. The Examples given by *Basil* and *Chrysostom* were follow'd by too many, who were not equal to them; and from hence proceeded such gross, shameful Corruptions in the Worship of the Church. If they had always kept to their first *Forms*, as they did for three Hundred Years and more, the Worship of the Church had been kept undefil'd. But when Bishops varied from the Primitive *Forms*, this made Way for endless Superstitions. And this is all that can in reality be prov'd from the words of Cardinal *Bona*, which the Gentleman sent me to prove, That Bishops had Power to make, or alter *Liturgies*, and which I have put in the Margin. * The Bishops did this, not by Law, but by Usurpation. The Law of the *Roman* Church in the worst, and darkest Ages, was, That all Churches even in their own Way and Manner of singing should follow the † *Metropolitica*!; and the Metropolitan himself had no Power to alter any Part of the publick Offices, but by Direction from *Rome*; yet it was frequently done; and Popes took no care to restrain this, or any other Irregularities, that brought Grist to their Mill; and indeed it would

* Varietas autem & diversitas a Romano aliquibus Ecclesiis ind: exorta videtur, quod singuli Episcopi pro suo arbitratu, vel pro loci conditione, aut Patrie moribus, aliquid vel addiderunt, vel subtraxerunt, sibi que propria officia composuerunt, idemque fecerunt ordinum religiosorum Præfecti. Hæc autem Licentia quidlibet pro arbitratu audendi sine certâ lege & disciplina aded quandoque excrevit, ut in multis Codicibus adhuc extant officia, missæ, Hymni, Orationes, quæ sine risu, vel potius indignatione legi non possunt. De Reb. Liturgic, cap. vii. pag. 84.

† Distinct. XII. cap. 13.

would have been very difficult to do it before the Invention of Printing. It is true, * Mr. Collier says, That *Osmund*, Bishop of *Salisbury*, drew up the *Office secundum usum Sarum*, and he cites *Harpfield* for saying, That before this every Diocese had a particular Liturgy. But *Brompton* calls it *Librum ordinalem Ecclesiastici Officii*, and *Brompton* liv'd less than an Hundred Years after *Osmund*. † *Higden* gives it the same Name. And * *Lyndwood* tells us, That an *Ordinal*, was a Book that contain'd the Manner and Method of saying of *Divine Offices*: It was neither the *Missal*, the *Antiphonar*, the *Lecti-nary*, the *Antiphonary*, nor the *Ritual*. It contain'd no *Divine Office*, but only Instructions for celebrating all Parts of publick Worship. And *Harpfield* is too Modern to be depended upon; nor does Mr. Collier cite his Words. It does not appear, that every *English* Bishop might choose which of the *Uses* he pleased. Nay, every Bishop was oblig'd to continue the Custom of his Church, or to receive those of the Province. And the Provincial Use was certainly that of *Sarum*. This was undoubtedly drawn by *Osmund* of *Salisbury*, as Precentor of the Province of *Canterbury*, and under the Direction of *Lanfranc*, then Archbishop: When, or by whom the other *Uses* were compos'd, is unknown. But *Hereford*, *Bangor*, and *Lincoln* are Diocesess very remote from *Canterbury*: And these *Uses* might therefore be gradually introduced

* Eccl. History. pag. 277. Vol. 1. † Polychron. Lib. VII. cap. 3. A. D. 1177.

* See Lyndw. pag. 2, l.

duced in those Dioceses, for want of Care, and Inspection in our Metropolitans. And when they were settled by long Custom, they could not be chang'd without a particular Interposition of the Papal Authority. My very Learned Friend observes too, That not only Bishops, but Abbots, did at Discretion make new Offices; and he proves it from *Bernard*, *Petrus Cluniacensis*, and others. But these Offices were only for the Use of their own Houses, and such lesser Cloisters as depended on them. They made a Distinction between Ecclesiastical, and Monastical Customs in Saying, or Singing *Divine Offices*. These last, they call'd *private Customs*, and the *Canon-Law* expressly forbid the mingling of the one with the other in the *Text* immediately after that above cited; so that what was done by Heads of Monasteries proves nothing in the Case of Bishops. Archbishop *Cranmer's* Prayer on Occasion of Domestic Tumults, seems to have been publish'd before *Edward VI's Act of Uniformity*, which tied up him, and others to authoriz'd Forms only. Besides, he did not peremptorily injoin the Use of it. The Words preceding the Prayer, were these: * *The Exhortation to Penance, or the Supplication may end with this, or some other like Prayer.* † Archbishop *Parker* on account of a War Abroad, a Pestilence at *London*, a Famine at *Canterbury*, where he then resided, prescrib'd a particular Form of Prayer, with Preaching in the Cathedral on

* *Snype's Mem. of Archbishop Cranmer. p. 182.*

† *Snype's Life of Parker. pag. 131.*

on *Fridays*, and on *Mondays*, and *Wednesdays*, in the Parish Churches of that City: But in his Letter to *Cecil*, in which he desires a Warrant from the Council, he acknowledges, That he, and the other Bishops were holden within certain Limits by Statutes, and so might stand in doubt how it would be taken. * *Grindal* did as his Predecessor had done before him; nay, he had taken the same Liberty while Bishop of London: And the same did † Archbishop *Whitgift*. ** *Aylmer*, Bishop of London, assum'd the same Authority within his Diocese. But these were all Occasional only; and if they had had the Law with them, as it is evident they had not; yet what they did was not agreeable to the *Canons of our Church*, and even of the Apostolical Age. The *Canons of 1571*, charge "No other Form to be used in Singing or Saying Prayers, or in the Administration of the Sacraments, but only that which is set forth, and prescrib'd in the *Book of Common Prayer*." And during the three first Centuries, the *Apostolical Forms* were every where observ'd, and there is no Appearance of any Variation from them. I am sensible some will from thence conclude the necessary Defects, and Imperfections attending our Way of Worship by set, prescrib'd Forms. But as for myself, I am thoroughly persuaded that there never has been any occasion for an Additional Form in the Memory of Man, or even of History. The great Storm

* *Strype's Life of Grindal*, pag. 70. and 248.

† † *Strype's Life of Archbishop Whitgift* pag. 276, 317, &c.

** *Strype's Life of Aylmer*, pag. 123.

Storm in 1703, hath been alledg'd as an Instance of this sort. But I must declare, That in my Opinion the *Suffrage* In the *Litany* [*From Lightning, and Tempest — and from sudden Death, Good Lord, deliver us*] was as sufficient as all the most labour'd Composures, or *Ex-tempore* Effusions of those who hope to be heard for their much speaking. Those of our Prelates who drew and publish'd *Forms*, and recommended the Use of them, did what was popular and pleasing to the Generality, and by this Means were safe in acting directly against *Law* and *Canon*: So now those Priests among us, who use Prayers of their own before Sermon, are for the same Reason not only safe from Censure, but better regarded even by some of their Superiors, than they who keep themselves within the Bounds of the *Laws*, and *Canons*. For, if these Prayers of theirs be not contrary both to *Laws* and *Canons*, it is impossible any Thing can be so.

SINCE the Time of Archbishop *Whitgift*, I am not aware that any *Occasional Forms* have been injoin'd or recommended without a Royal Command to inforce the Use of them; and tho' the Prerogative Royal acknowledg'd by Parliament, doth excuse them who compose or use them, from Censure, and Punishment: yet it is only a Dispensing Power, and therefore lays no Obligation upon any Man. If it be ask'd, How it came to pass that the Clergy have so generally run into a Compliance with these Occasional Prayers? I shall only desire the Querist to turn his Eye back to the Case of Mr. *Huntley*, and to observe how he was treated by the

the High-Commissioners for opposing an uncanonical Injunction of his Archdeacon only. How then may we suppose they would have dealt with a Clergyman that declin'd Obedience to King and Ordinary both together? The High-Commission-Court terrify'd Clergymen into a blind Obedience to any thing that came from Court. It is to be hoped that by Degrees we shall recover ourselves from that Fright,



Addenda

Addenda, & Emendanda

TO THE

Clergyman's Vade Mecum. Part I.

Page 3. **F**OR the Reign of King Ina,
Line 34. about A. D. 740, read, the
latter End of the VIIIth Cen-
tury.

9, l. 18, Instead of the 2d, and 3d Paragraph
of the 3d Chapter, read as follows:

It seems very evident from the six-
teenth *Answer of Ecgbriht*, Bishop of
York, that the *Missal*, and other *Se-
vice-Books* of the Church of *Rome*, were
used here from the first Times of the
Nation's Conversion to Christianity. It
is true, Pope Gregory in his *Answer*
to Augustine's *Second Question*, gives
him Liberty to compose a *Liturgy* of his
own, by selecting what he esteem'd best
out of the *Romish*, *French*, or any other
Forms; but it does not appear that *Au-
gustin* ever did this. And if he had,
it seems probable, that Gregory would
have recall'd this Privilege granted to
him, after he himself had reform'd the
Sacramentary.

Page L. *Sacramentary*. His former Indifference to the *Ramish Forms*, seems to have proceeded from his Dislike to the Share his Predecessor *Gelasius* had in the Drawing of them. See my Note on *Gregory's 2d Answer* in my *Collection* and *Preface* to that Book, *Seet. I.* The Council of *Cloves-hoo*, A. D. 747. Ca. 10, 13, 15, 18.

10. l. 22. Add, *Quesnell* ascribes this Hymn to *Sebutus*, the Monk. See *Quesnell's Observations on the Breviar. Mont. Cals. in Petir's Theodores Penitential.*

13. l. 26. After the Word *conformable*, add, A Custom hath prevail'd in Parish Churches to sing a Psalm in Metre between Divine-Service and Sermon, and in most Places between the Litany and Communion-Service: And this is much more agreeable than to run all the Offices into one. And there is an Act of Parliament to countenance this Practice; I mean, K. Edw. VI's Act of Uniformity, by which it is made lawful, "To use
" in Churches any Prayers or Psalms
" taken out of the Bible at any due
" Time, not letting thereby, or omit-
" ting the Service, or any Part there-
" of."

18. l. 23. And every where else. for Dr. Gibson, read Bishop Gibson.

28. l. 1. After 1661, add, and again in the Reign of Q. Anne.

37. l. 13. For 764, read 786. And in the next Line but one, for Forty, read Ten.

Dele

Page. L.

37. l. 17. *Dele* Dr. Thomas Tenison, and the whole Paragraph, and instead thereof, read, Dr. William Wake, the present Archbishop, is the 81st from St. Augustin, taking in Elsin, Reginald, and John Ufford, (who did not live to be Consecrated) but not Roger Walden, who yet acted as Archbishop, during Arundel's Exile. The present Archbishop was translated from Lincoln.

39. l. 14. For his, read the.

41. l. 23. read Superhumeral.

41. l. 19. For Province, read See.

45. ad calc. In Margin, Add, this Act is now repealed.

53. l. 6. *Dele* Right Reverend Bishop of Lincoln, &c. to the End of the Paragraph.

63. ad calc. Add Disputes have of late arisen between Archdeacons and their Clergy concerning the former's Power to command any of the latter to preach a Sermon at the Visitation. It is not a ruled Case. But Visitors are bound by Canon-Law to preach in their Visitations, or to maintain others to do it for them. See the Case of a Rector refusing to preach, &c.

64. l. 2. *Dele* that Line beginning Archpresbyter. After Rural Deans, add, these Officers were first introduced about the Time of the Conquest.

66. l. 4, 5. *Dele*, to their Heirs and Executors.

105. l. 13 Add, But is said, that some Peers, when

Page L. when their Chaplains have been deny'd Dispensations, have found Redress by complaining of the Archbishop to the House of Lords for Breach of Privilege.

132. 1. Read thus, the Pope, who bestow'd Bishopricks, and Benefices by way of Provision, and Reservation, on Condition that one half of the first Year's Profits were given to him.

Ibid. Instead of the first three Lines of the 2d Paragraph, read as follows: It is observable, that the Pope could never obtain the First-fruits of Benefices in England, but of Archbishopricks, and Bishopricks only. Nor did he ever receive Tenths here, as a settled annual Revenue; but by occasional Grants only. But now by Stat. 25 Hen. VIII. cap. 20, and 26. c. 3. both First-fruits, and Tenths, are made a standing Revenue to the Crown. And by those Acts, He who enters upon any Spiritual Living, &c.

147. ad Add. But by the old Laws of England, a Distinction was always made between the Spiritual, and Temporal Revenues of the Church. The Spiritual Revenue was whatever arose from the exercise of Jurisdiction, or the use of the Keys, together with the Tythes, Offerings, and ancient Glebes. These were ever exempt from all Secular Impositions, till the Pope took upon him to demand Taxes from them, and

Page L. and gave leave to Kings to do the same, tho' not without the Clergies Consent in their Chapters or Convocations. The Temporal Revenues, were the Mannors, Lands, and other Real Estates given by Men of Generosity. These were indeed subject to the Three Taxations aforesaid.

149.1.23 At once in three Years, make a Note of Reference, and add in Margin, Now once in Seven Years.

154. Add the following Paragraph between the two first Paragraphs, Since that Time the Convocation was legally call'd and open'd, and hath sat so long as to draw and present an Address or two to the Crown. Nay, they were once qualified to enter upon Business by a Royal License sent to the Archbishop, and a Letter directing them to several Heads of Business (which yet did not come till several Months after the former.) The first Day of their entering on Business, was May 3, 1717. But the Business chose by the Lower House (tho' very just and seasonable) was of such a Nature, as the Times would not bear. Therefore on the next Synodical Day, May 10, after the Lower House had made some Progress in that Affair, which they, and the main Body of the Clergy whom they represented, had much at Heart, and ever will have so long as they know, and have any Regard to their own Character, the Convocation

Page. L. vocation was prorogued by Royal Writ from that Day to November 8, following, And hath ever since by long Prorogations been continu'd in a State of Separation.

159. 1. 26. After chosen, add, by the Bishop. To the same Line after Diocese, add, or the several Archdeacons do by Turns choose two Proctors.

160. Let the last Paragraph of Chap. xvi. stand thus: In former Ages, the Rural Deans did likewise hold their Chapters, which consisted of the Incumbents, and other Clergy within their several Districts, every three Weeks; and had likewise their principal Chapters once in three Months. See *Lyndwood*, &c. as in the former Edition.

167. 1. 27. For they, read Ministers, and Parishoners.

178. Instead of the two Paragraphs in this Page, insert the two here following.

1. *Excommunicatio Minor*, was a Sentence introduc'd in the XIIIth Century, to be pass'd on those who knowingly convers'd with those, who were by Name excommunicated, and when there was no Necessity for their so doing. I do not find any certain Proof that it was ever used in any other Case. *Lyndwood* asserts, "That it was grown out of Use in the Ecclesiastical Court, in his Time; and that Interdict had succeeded in its Stead." Where by the Word *Interdict*, he must mean

Page L. mean Prohibition laid on particular
 Persons against going into the Church.
 There is no Reason to suppose that it
 hath been restor'd since Lyndwood's time.
 See Lib. II. T. 6. c. *Evenit. & Interdict.*
 By this Censure Men were depriv'd of
 Sacraments, and Sacramentals only.
 2. *Excommunicatio Major*, is. that
 Sentence by which Men are depriv'd
 not only of Sacraments, and Sacra-
 mentals, but of all Communication
 with Christian Men, without the
 Church, as well as in it. But it is
 to be observ'd, That by the Practice
 of our Church in latter Ages, Men are
 actually depriv'd only of Sacraments, and
 Sacramentals, and of Entrance into the
 Church, by Virtue of this Sentence.
 They are not depriv'd of Communi-
 cation of Christian People (otherwise
 than in the Church) till they have re-
 main'd three Months under this Sen-
 tence, without seeking the Benefit of
 Absolution, (according to the 65th of
 our present *Canons*) and till others be
 admonish'd to avoid their Company,
 and Society, by a publick Denuncia-
 tion to be made, not only in the Pa-
 rish, but in the Cathedral Church. So
 he who is excommunicated for Preach-
 ing Herefy is not depriv'd of Conver-
 sation with Christian People, till he
 hath a second time been guilty of that
 Crime, tho' he was excommunicated

Page. L. for the first Offence. But the Person thus excommunicate, is liable to be taken up by a *Curia*, before he is depriv'd of Conversation of Christian People; and if he do not reconcile himself within forty Days, to be reckon'd from the Time of the first Denunciation in the Parish Church. And if that Writ might not be executed before the second Denunciation, it would now not be executed at all. For I never knew any such Denunciation made, nor consequently any Prohibition of communicating with Excommunicates. It was the neglect and total disuse of this Prohibition that led others as well as myself into an Opinion that an Excommunication in our Common Form is of the lesser Sort. For we could not see how Men under a greater Excommunication might be convers'd with as freely as others, which yet we see commonly done without Censure, or Controul. But it seems evident that the lesser Excommunication is wholly thrown out of Doors; and that therefore there is no other in being but what was of old called the greater: and is so still in the Eye of the Law. And it is a Maxim with the *Canonists* that *Excommunicatio*, if the Word *Minor* be not added to it, imports the Greater: And that if a Judge say, *Excommu-*
nicate

* See *Arundel's Constitut. Reverendissim.*

Page L. *nicate* John, or James, it implies the greater Excommunication. But let it be observ'd that this is still in effect a lesser Excommunication, tho' it be a greater in the Eye of the Law. For it does not actually deprive Men of Christian Society out of the Church till it hath been denounced a Second Time, and in the Cathedral Church; which is now scarce ever practis'd. But it subjects Men to the Writ. *de Excom. capiendo* by St. 1 Hen. 5. c. 5. and 5 Eliz. c. 23. And a Person taken by Virtue of this Writ is Bailable only by the Court of *King's-Bench*, not by Sheriffs, or Justices of Peace, *Godolph. c. 42. §. 25.*

179 10. *Dele* declared.

ib. 27. *Add*; Yet the Excommunication takes place from the committing of the Fact; and the Criminal is pronounc'd not only *Excommunicatum esse*, but also *fuisse*. And Orders taken, or any Thing else done in the Ecclesiastical Court in Favour of them since the criminous Fact, shall be of no Advantage to them.

181 13. *Dele*, thro' the Iniquity of the Times.

181 21. I find much Objection made against this. But I am not at all sensible of one Argument among a great many Words used on this Occasion. The Opponents don't observe the difference between being excommunicated, and being declared excommunicate. I don't

Page. L. wonder that Divines mistake in this Point, when the Practitioners in our Courts have drop'd not only the old practice but the very Notion of an *ipso facto* Censure. But our temporal Courts, tho' they first took the Term from the Ecclesiastical Lawyers, have preserv'd the true Meaning of it. They deny any Sentence to be necessary, when an *ipso facto* Deprivation is incurr'd. I am not at all sorry that our Ecclesiastical Courts have lost the true Notion of an *ipso facto* Excommunication, but rather wish, that there had never been any such thing. I judge it abundantly sufficient for any Clergyman to justify himself for refusing to bury the Corps of a Dissenter, to allege the Maxim of the Canon-Law, *Quibus non Communicamus vivos, nec Communicamus Defunctis.* Decretal. Lib. III. T. 28. c. 12. See also Bishop Gibson's Code. p. 540.

182. l. 16 For Lord's-Supper, read Communion.

183. l. 5. After Excommunicate, add, such as convers'd with Excommunicates, without Necessary.

185. At the end of the first Paragraph, add, There was also an Interdict against particular Persons, whereby they were for some lesser Crimes prohibited from entering within the Church Doors. This Lydwood says, succeeded in the room of the Lesser Excommunication.

Ibid. 4. Below, read Fugatio.

189. After the first Paragraph, add, By Stat.

Page. L. 27. Henry VI. c. 5. Fairs and Markets are forbid to be kept on *Ascension-Day*—*All-Saints*—*Good-Friday*— and every *Sunday* in the Year (the four *Sundays* in Harvest excepted) on Pain of forfeiting the Wares to the Lord of the Franchise. This is still in Force, save that the four *Sundays* in Harvest, are by latter *Acts* to be kept as other *Sundays*.

190. l. 14 Read Bishop or Minister. And add at the End of this Paragraph, By this *Act* *Wednesday*, (not falling in *Christmas* or *Easter-Week*) is made a *Fish-Day*; yet one Dish of *Flesh* to three of *Fish*, is allow'd on this Day, of which it is said, that it had not heretofore been used as a *Fish-Day*. By *Stat. 27. cap. 11. of Eliz.* the foregoing *Act* is repeal'd so far forth only as it concerns eating *Fish*, or prohibiting *Flesh* on *Wednesdays*, it not having before that *Act* been used as a *Fish-Day*. *Stat. 35. of Eliz. c. 7. Sect. 22.* restrains the Forfeiture for eating *Flesh* on *Fridays*, to 20 s. or one Month's Imprisonment; and for concealing of it to 13 s. 4 d. any thing in the said *Stat. (Stat. 5. of Eliz.) to the contrary notwithstanding*. This supposes the *Act* yet in Force. The *Stat. 1 Jac. I. c. 29.* speaks of the 5th of *Eliz.* as yet in Force in *Sect. i. and iv.* Therefore tho' this *Act* of *Eliz.* was at first only temporary, it is certain it was made perpetual by some following *Statute*; and *Wingate*, the Abridger, puts it as a perpetual *Act*,
E 2 (tho

Page. L. (tho' what relates to *Wednesday*, ought to be excepted). yet Bishop *Gibson* prints it as a repealed *Act*; and a late Writer affirms it so to be; but without Cause for so doing. By *Stat. 2, 3. Edw. VI. c. 19.* the Penalty for eating *Flesh* on *Fith-Days* is 10 s. and 10 Days Imprisonment for the first Offence, 20 s. and 20 Days Imprisonment for the second. The *Act* is declared to be made on Consideration, that *due, and godly Abstinence is a Means to Virtue*; but especially, that *Fishers may be set at work, and that by eating Fish, much of Flesh may be saved and increased.*

192. l. 10. After Solemnities, add, I mean, it is sufficient to secure the Clergyman that observes such Days, and uses such Prayers, from the Censure of his Ordinary, and the Penalties of the *Statute*; but it is not sufficient to lay any Obligation upon him to comply with such Impositions. See the *Case of Occasional Days, and Prayers.*

202. For the 27th Line, read, since the Reformation.

204. At End of the first Paragraph, add, or rather the 6th *Const. of Louch Archbishop of York, 1347.*

210. Add the following Paragraph between the two Paragraphs in this Page. Against this it is objected, That few Churches begin *Evening-Prayer* after Six. True, and this is not the only Impropriety occasion'd by this Means in our *Liturgy.* But

Page. L. But that Six is the Hour of *Even-Song*, is so certain, that no Man will dispute it, who is not a perfect stranger to Things of this Nature. Nor is it less clear, that *Feasts* are to be kept from *Even-Song* to *Even-Song* inclusively. And tho' the Natural Day (according to this Account) be pass'd at Six in the Evening, yet the Festival-Day is not pass'd till *Even-Song* is ended. *Holidays* that begin not till *Morning-Prayer* are not perfect *Feasts*. They were deem'd to be of an inferior Rank by them that had the ordering of these Matters: But then they who terminate the *Feast* within certain Minutes, and because Six is the Hour of *Vespers* will allow no latitude, have never consider'd, that in the Scripture Language (which is our best Guide in this Matter) what is express'd by the Evening, and going down of the Sun in one Text (*Deut. xvi. 8.*) is call'd the Time between the two Evenings in another (*Exod. xii. 8.*) And the Time of the Evening-Sacrifice is express'd by this last Phrase, *Num. xxviii. 4.* And it is notorious that this was any Time between the ninth and twelfth, according to them, the third and sixth with us.

P. 267. l. And again, l. 8, 7. dele *Febr. 29.* Insert the long Marginal Note, as another Paragraph between the two Paragraphs in this Page. But dele the two first Words, viz. *'Tis true.* After the Paragraph thus inserted, add what here follows. In

Page. L. In the Year 1719, was publish'd at Oxford a very ingenious Treatise, written by the late Memorable Dr. Wallis, concerning St. Matthias-Day: By which we have considerable Light given us into the Ecclesiastical Computus. He hath beyond all doubt proved that the Church Account of Time is, and ever was made in the Western Church by the *Kalends, Nones, and Ides*; not by the vulgar numbring of the Days of the Month, 1, 2, 3, &c. and that the Feast of St. Matthias had for many Ages pass'd before the Reformation, been kept (in the Leap-Year) on the 25th of Febr. (according to the vulgar Account) I have an Almanack in a Printed *Portiforium secundum usum Sarum*, which confirms the Doctor's Notion. For in a Rubric at 5 *Kal. Martii*, or February 25, it says, *Si Bissextus fuerit, quartâ die a Cathedrâ Sti. Petri* (that is, 8 *Kal. Mart.* or Feb. 22.) *Inclusivè fiat Festum Sti. Matthie, & F. Litera bñ numeretur.* Yet I cannot but wonder that the Doctor should affirm the 24th to be the Intercalary, or Infition Day on the Leap-year, as he does, pag. 6, 8, 14. Nay, he says, pag. 5. and elsewhere, that the said Intercalary Day, is between the 6th and 7th *Kal.* of March. He certainly meant between the 6th and 5th: The 24th is always the 6th *Kal.* on Leap-year as well as others, the 25th is the 5th *Kal.* on the common Year, the Bissextus on the Leap-Year,

Page. L. Year, and therefore most assuredly the Intercalary Day. The Letter F is to be repeated, not by putting it first to the 23d, and then again to the 24th, but by putting it first to the 24th, then to the 25th, and the 6th Kal. goes along with the Letter F. It is absurd to suppose that the first 6 Kal. which is Febr. 24th should be *Bissexthus*, and the 25th simply *Sextus*. *Primo-Sextus* must of Necessity precede *Bissexthus*. And *Bissexthus* is but another Word for the Intercalary Day. The Mistake seems to have arisen from the Doctor's forgetting that the Computation of the *Kalends* is retrogradous. I mean forgetting it at the precise Minure that he mention'd the 6th and 7th. If he had indeed believed that it was between those Days, and had not had a Failure in Memory, he wou'd have said the 7th, and 6th, because here the 7th is before the 6th. And the happiest Memories with the greatest Knowledge cannot secure Men against such Lapses. The Doctor's own Author; *Clavius*, with whose Citation he ends his Book, corrects him in this Point. His Words are, *In anno Bissextili Festum Sti. Matthiae celebratur 25 Februarii, & bis dicitur Sexto Kalendas, id est, Die 24, & Die 25.*

Yet the Reformers in Q. Elizabeth's Time seem to have thought the 24th the Intercalary Day. For they give this Direction, "When the Years of our Lord
" may

Page. L. " may be divided into four even Parts,
 " then the *Sunday* Letter leapeth; and
 " that Year the *Psalms*, and *Lessons*,
 " which serve for the 23d Day of *Febr.*
 " shall be read again the Day follow-
 " ing, except it be *Sunday*, which hath
 " proper *Lessons*. See the Order how
 the rest of *H. Scripture* is appointed to
 be read in *Q. Elizabeth's Common-Prayer-Book*. This Mistake was probably
 seen by our Reviewers at the *Restau-ration*, therefore they struck it out. But
 it is observable that this Mistake of *Q. Elizabeth's* Reformers did not at all
 affect the Observation of *St. Matthias's* Day: For by that *Kalendar*, *St. Mat-
 thias's* Day was fix'd to the 25th on all
 Years as well as *Leap-Years*. Therefore
 not only *Dr. Wallis* (pag. 7.) but the
 last Writer on this Subject (pag. 251.)
 is mistaken, when they say, That *St. Matthias's* Day was always the 24th.
 So is the latter, when he says, the *Dominical Letter* is not chang'd till *Feb.*
 29, and that the *Dominical Letter*
 for the 28th, is repeated on the 29th.
 contrary to the known stated Rule. Up-
 on the whole, I see no Argument to
 prove that it was not the Intention of
 the Reviewers of the *Liturgy* to depart
 in this Point from the old *Computus*. But rather am inclin'd to sup-
 pose, that as *St. Matthias's* Day from
 the Beginning of *Q. Elizabeth's* Reign
 to the *Rebellion*, had been always on the

Page. L. the 25th; so for the future it shou'd be always on the 24th, as it was in the XIth Century, according to *Micrologus*: And that this was the Design of the Reviewers. Therefore I shou'd still think I had reason to adhere to the Emendation made by my Venerable Patron, Archbishop *Sancroft*, in this Point, had not Dr. *Wallis* assur'd us, that the Archbishop, by the Discourse of himself, and others on this Subject, was satisfy'd "it was his Mistake; and that if he "had continu'd Archbishop, and in "good Circumstances, till another *Leap-Year*, he would have revers'd his former Order, and directed the *Almanacks* to be printed as formerly.

297. *Before the last Paragraph, add.*

I take it for certain, that the Incumbent, or his Representative hath of common Right not only a Vote in Vestries, but is likewise to preside in them; as having a greater Right in the Place where they are holden, and in the Affairs there to be transacted, than any one single Ma. Yet if the Vestry be held for choosing Church-Wardens, or a Parish-Clerk in a Church where the whole Right of Election is in the Parishioners, it may be justly question'd, Whether the Incumbent can have a Right even of being present at such Elections.

A Distinction is also to be made between

Page .L. Between Vestries, and Meetings for Parish-Business. Vestries are for what concerns the Church, and is of Ecclesiastical Cognizance. But by *Stat. 43 Eliz. c. 2.* Church-Wardens and Overseers are to meet once a Month in the Church on *Sunday after Divine-Service* to regulate the Maintenance of the Poor: And they may no doubt call whom they please to their Assistance. By *Stat. of 3, 4, of W. and M.* all the Inhabitants are to meet for choosing Surveyors of the Highway, and for taking the old Surveyors Accounts. The *Statute* does not mention the Incumbents on these Occasions. Yet of old, few Justices would pass any thing that was not subscrib'd by the Minister.



Addenda, & Emendanda in Clergyman's Vade-mecum, Part II.

Pref.



AGE xxix. Line 5, read Coun-
sel.

lxxxvii.

At the Word Austin, l. 9. make a Note of Reference, and in the Margin add, yet see

Pres. see DCI. Answer VI. in my *Collection of Laws, &c.* with the Notes.

cx. *At the Words Eastern Mode, make a Note of Reference, and add in the Margin, The Britons certainly thought that they acted by the Authority of St. John, as the Easterns also ever pretended; yet their Easterday was always on Sunday. See DCLXXIII. in my Collection of Laws, &c. and the Notes there.*

CXII. *Read A. D. 785. And in the next Page, Lin. 19. l. 17. as English Monks make a Note of Reference, and add in Margin, See my Note on that Canon, in my Collection of Laws, &c.*

Book

Page. 3. Dele. may Austin, &c. to Priest, Line L. 13. 18.

5. l. 19. Dele, 'Tis true.

6. l. 27. For Penance, read Censure.

7. l. 28. After last, add, notwithstanding their other intermediate Intercalations.

10. l. 19. Read indefinitely.

pag. 25. To can. 43 add this Note, The Arians falsely imputed this Opinion of Three Unbegotten, to the Orthodox. See Alexander of Alexandria's Letter to Alexander of C. P.

pag. 46. Add to the Note on Can. 3. yet see DCCXL. 31. in my Collection of Laws, &c.

48. At the Beginning of the Note, read Rufinus's, not his.

63. l. 7. Read, travail.

67. l. 3, 4. Remove the ; from after Times to after Perfection. Before

98. l. 9. Before Liturgy, add the.

105. ad Insert this Note: In this, and the calcem. next Canon, the Reader sees how easy and ready the Primitive Church was in receiving Hereticks on their Recantation, without Penance: So it continued to the End of the VIIth Century, as appears by Can. Trull. 95. See also Can. C. P. 7. Pope Felix indeed toward the End of the 5th Century treated those who were rebaptiz'd by *Arians*, as the *Nicene* Fathers did those who had been guilty of Idolatry. (See his Decree, pag. 327. of this Book.) But this was not esteem'd simple Heresy; but, in the Pope's Construction, was a Renunciation of Christian Baptism. Felix was in a great Heat against the *Arian Vandals*, who had now invaded *Italy*, *Spain* and *Africa*, and we are not to wonder if he was transported with Indignation against those who so far comply'd with them, as to accept their Baptism. The *Canons* of *Agde* and *Epone* were made on the same Occasion, and in local Councils. As to the 22^d Canon of *Elivern*, the Reader has my Opinion of all those *Canons* in the Preface to the Second Edition of this Book. Of what Weight is all this put together, against these two Laws of the Primitive Church, and the Canon of the general Council of *Trullo*?

127. l. 29 Read Justellus's not his.

128. l. 28 Read Subornation.

129. l. 28 Dele, who.

Read

Page 1.

145.1.21 Read against Petty-pluralists.

147.1.15 Read heretical.

pag. 155. Let the Paragraph beginning 'Tis true,
be in Italic.167.1. After Hosius, add, That particular Ca-
pewlt non might be made in some Council,
where Hosius was present, and after-
wards inserted into this heterogeneous
Collection,

174.1.15 For by, read before.

and 16.

176.1.20 For make Obeisance, read salute: And
at the Beginning of Note † add, by say-
ing, Peace be with you. This Salutation
was to be used by none under a Dea-
con. See Bingham, Book xiv. cap. iii.
Sect. 6.183. After *musheor*, add, That the Honey and
Milk was intended to be used in Bap-
tism, seems probable. The Question is,
What that solemn Day was on which it
was to be blessed on the Altar a-part
from the Eucharist; and whether that
Day be not here call'd the Mystery of In-
fants, as it seems plainly to be by Dionysi-
us Copy, which I take to be the most
authentic. It is true, Easter-Eve was
a known solemn Time for Baptism: But
on that Day there was no Oblation at
the Altar till Midnight, or after: Be-
cause this was the most solemn of all
the Fast-Days throughout the whole
Lent, in all Churches, East and West,
and the Baptisms were celebrated in
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Read

Page. L. the Day-time. Further, *Whitsun-Eve* was as known a Time for Baptism as *Easter-Eve*; and it cannot be supposed, that the Milk blessed at *Easter*, was kept till *Whitsuntide*: Yet the Canon mentions but one most solemn Day: I must still leave it, as I found it, in the dark.

184. l. 8. Read of the Prime See in *Numidia*.

194. l. 2. For Penalties, read Forfeitures.

201. l. 1. For Letters, read Lettes.

— l. 6. For none, read no one.

207. l. 14. Read, they recognize a Law, &c. and put this before the preceding Line, in Text.

222. l. 4. From Bottom, read Canon.

224. l. 5. From Bottom, for Clergy, read Clerical Character.

229. l. 9. For when, read till.

238. l. 16. Read intended, not extended.

255. l. 11. Dele (.

288. l. 7. For their, read your.

296. two *EPISTLE to Felix Bishop of Nuceria*:
last lines Here Innocent calls himself the Head, and Top of the Episcopate, and commends Felix for referring Doubts to him, according to the Institutes of the Ancients.

306. l. 23. Instead of in officiating, read in Allusion to Luke xii. 35.

328. ad *calcem*. Add, It is true, the new Baptism they had received, was that of the *Arians*. But they did not do it of choice, but were driven to it by the Fury and Cruelty of *Hunric the Vandal*, that had banished.

Page. L. nish'd several Thousands of the *African* Bishops, who could not be forc'd to embrace the Conquerors Religion by other Barbarities exercised upon them. It was not barely for Heresy that *Felix* treated them with this Severity; but for submitting to a New Baptism, which *Felix* interpreted as a Renunciation of Christianity. Neither *Arians*, nor any other Heretics were ever oblig'd to any Penance in order to be received into the Church, but only to a Recantation of their Error. See *Can. Laod. 7, 8.*

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